

THE
PENSIONS ACT

(ACT XXIII OF 1871.)

(WITH THE CASE-LAW THEREON)

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THE PENSIONS ACT, 1871.

TABLE OF CASES DIGESTED IN THIS ACT.

I.L.R. Allahabad Series.		PAGE
6 A 680 .	Imtiaz Begam v. Liakat-un-nissa	5, 38
6 A 682	Tulsa v. Gopal Rai	36
7 A 886	Imtiaz Begum v. Liakat-un-nissa	5, 38
9 A 213	Sahibunnissa Bibi v. Hafiza Bibi	31
10 A 396 (398)	Nagar Mal v. Ali Ahmed	4, 29, 32
17 A 1 (P C)	Deo Kuar v. Man Kuar	17, 18, 25, 26
25 A 73 (74)	Ihtisham Ali v. Sham Sundar	11, 15, 25
26 A 617	Lachmi Narain v. Makund Singh	9, 21, 33, 34, 38
28 A 104	Ganpatrao v. Anand Rao	7, 15, 21
31 A 382	Amna Bibi v. Najm-un-nissa	15, 21, 33
32 A 148 (P C)	Ganpat Rao v. Anand Rao	28
I.L.R. Bombay Series.		
1 B 75 (80)	Babaji Hari v. Rajaram Ballal	4, 5, 18, 21, 22, 25, 27, 29, 32, 36, 37
1 B 203 (207)	Parbhudas Rayaji v. Motiram Kalyandas	7, 8, 9, 10, 27
1 Bom. 523 (529)	Ravji Narayan Mandlik v. Dadaji Bapuji Desai	4, 6, 7, 8, 9, 14, 15, 21
1 B 531	Gurushidgavda Bin Rudragavda v. Rudragavdati Kom Dyamangavda	5
2 B 99 (103) (P C)	Vasudev Sadashiv Modak v. The Collector of Ratnagiri	4, 11, 12, 17
2 B 294	Jamnadas v. Lalitaram	7
2 B 346	Ramachandra Sakkaram Vagh v. Sakkaram Gopal Vagh	14, 26, 35
3 B 452	Bhaskarappa v. The Collector of North Canara	6
4 B 431	The Secretary of State for India in Council v. Khemchand Jeychand	37
4 B 432 (437)	The Secretary of State for India in Council v. Khemchand Jeychand	3, 8, 10, 15, 18, 21, 27, 33, 34, 36, 37
4 B 437 (N)	Maharval Mohansangji Jeysangji v. The Government of Bombay	12, 22
4 B 443 (N)	Mansang Madhavsangji v. The Government of Bombay	13, 21, 27
4 B 643	Desai Himatsingji Jotavarsingji v. Bhavabhai Kayabhai	7
5 B 249 (P C)	Ghansham Lal v. Bhansali	35
5 B 408 (419) (P C)	Maharaval Mohansangji Jeysingji v. The Government of Bombay	8, 9, 10, 11, 12, 18, 22, 27, 34

TABLE OF CASES.

I.L.R. Bombay Series- (Concluded).			PAGE
6 B 209	... Naro Damodar Ghugri v. The Collector of Poona ...	12, 17, 19	
6 B 244	... Nawab Mir Kamaludin Husen Khan v. Partap Mota ...	7	
6 B 598	... Ramchandra Mantri v. Venkatrao ...	6	
6 B 737	... The Secretary of State for India in Council v. Jamnadas ...	19	
9 B 285 *	... Vasanji Haribhai v. Lallu Akhu ...	17, 28	
11 B 222	... Shivram Dinkar Tharpuray v. The Secretary of State for India ...	14, 20	
12 B 534	... The Collector of Ratnagiri v. Antaji Lakshman ...	6	
14 B 573	... Janardhan Bhaskar v. The Secretary of State for India in Council ...	5, 20	
16 B 537	... Vyan Kaji v. Sarjarao Apajirao ...	5, 10, 11, 18, 26	
16 B 596 (599)	... Keshavray v. Ganpatrao Nilkanth Nagarkar ...	6, 15, 29	
16 B 731 (736)	... Vajiram Bhagwan v. Ranchordji Gopalji ...	4, 14	
17 B 169	... Jijaji Pratabji Raje v. Bal Krishna Mahadeo ...	11, 20, 27, 28	
17 B 224	... Daji Nilkanth Nagarkar v. Ganpatrao Nilkanth Nagarkar ...	12, 26	
17 B 431 (P C)	... Sheikh Sultan Sani v. Sheikh Ajmodin ...	14	
18 B 516 (517)	... Govind Sitaram v. Bapuji Mahadeo ...	18	
18 B 525 (532)	... Gangadhar Hari Karkare v. Morbhat Purohit ...	4, 7, 29	
19 B 250	... Dharamdas Sambhudas v. Hafasji ...	30	
22 B 496 (499)	... Niya Vali Ulla v. Bava Saheb Santi Miya ...	4, 11, 12, 15, 16, 18	
23 B 676	... Bhimbhat Gotkhandi v. Bhikambhat ...	28, 40	
28 B 241	... Krishnaji Sakharam Pingle v. Anant and Keshavrao ...	29	
29 B 480	... Balvant Ramachandra Natu v. Secretary of State for India in Council ...	4, 5, 11, 15, 18, 19	
30 B 102	... Trimbakrao Anandrao Mantri v. Balvantrao Narayanrao Mantri ...	4, 14	
31 B 512	... Damodar v. Satyabhama Bai ...	26	
I.L.R. Calcutta Series.			
8 C 422 (P C)	.. Mahammad Azmat Ali Khan v. Lalli Begum ..	27, 28	
18 C 216 (223)	.. Bishambar Nath v. Imdad Ali Khan ..	35, 36	
29 C 707	.. Gokul Mandar v. Pudmanund Singh ..	36	
I.L.R. Madras Series.			
2 M 294	.. Secretary of State for India v. Abdul Hakkim Khan.	4, 11, 15	
4 M 341	.. Mahommed Isaack Mushyak v. Azeezoon Nissaa Begam	13, 14, 18, 21, 26	
5 M 272	.. Muhammad Khasim Bahadur v. John Carlier ...	36	
5 M 302	.. Kolandai Mudali v. Sankara Bharadhi ...	4, 11, 15, 18	
6 M 361	.. Subramanya Ayyar v. The Secretary of State for India ...	11, 14, 15	
7 M 191	.. Panchanadayyan v. Nilakandayyan ...	5, 11, 18, 20	
11 M 283 †	.. Akhavartha v. Gouse ...	4, 11, 15	

* At p. 28, 9 B 285 is wrongly printed as 9 B. 285.

† At p. 4, 11 M. 283 is wrongly printed as 4 M. 283.

I.L.R. Madras Series—(Concluded).			PAGE
12 M 93	... Rama v. Subba	...	6, 19
13 M 75	... Kombi v. Aundi	...	14, 15
17 M 193	... Secretary of State for India v. Vydā Pillai	...	12
18 M 187 (188, 189)	... Andi Achen v. Kombi Achen	17, 18, 21, 25, 27, 36, 37	
21 M 105 (108)	... Sridevi v. Krishnan	...	39
21 M 310	... Kumara Tirumalai Naik v. Bangaru Tirumalai Sauri Naik	...	14, 18, 29
26 M 69 (71)	... Valia Thamburatti v. Anujani Kunhunni	...	36, 37
26 M 423 (426)	... Muthusami Naidu v. Prince Alagia Manavala Simmala Raja	...	35, 36
26 M 490	... Soundara Pandia Thevan v. Velathiappa Thevan	...	14
30 M 153 (154, 155)	... Subraya Mudali v. Velayuda Chetty	4, 8, 9, 15, 33, 34, 38, 39	
30 M 266	... Raja Kamodana Venkatanarasimha Ramachandra Row Bahadur v. Raja Lakshmi Narasamma Row Zamindari Garu	...	18, 21, 26
31 M 12	... Venkateswara Iyer v. The Secretary of State for India in Council	...	12, 15, 18

Allahabad Law Journal.

1 A L J 338	... Lachmi Narain v. Makund Singh	...	9, 21, 33, 34
6 A L J 519	... Anna Bibi v. Naim-un-Nissa	...	33
7 A L J 465	... Ganpat Rao v. Anand Rao	...	28

Allahabad Weekly Notes.

4 A W N 209	... Imtiaz Begam v. Liakat-un-nissa	...	38
5 A W N 267	... v. ————	...	38
7 A W N 22	... Sahibunnissa Bibi v. Hafiza Bibi	...	31
8 A W N 72	... Nagar Mal v. Ali Ahmed	...	32
A W N 1902, p. 161*	... Bal Krishna Bhau v. Govind Rao	...	21
22 A W N 187	... Ihtasham Ali v. Sham Sunder	...	15, 25
A W N (1904) 144	... Lachmi Narain v. Makund Singh	...	21, 34
1905 A W N 206	... Ganpat Rao v. Anand Rao	...	7, 15, 21

Bombay High Court Reports.

4 B H C 7 (A C J) †	... Krishnarav v. Rangrav	...	6
6 B H C 191 (A C J) †	... Vaman Janardhan v. Collector of Thana	...	6, 8
10 B H C 40 §	... Ganpatlal Anupram v. Sampatram Chelabhai	...	37
10 Bom H C Rep 281	... Maharana Fattesarngji v. Desai Kalliyarayaji	...	9
10 B H C 471	... Vasudev Pandit v. Collector Poona	...	6

Bombay Law Reporter.

6 Bom L R 423 (427)	... Balvant Ramachandra Natu v. Secretary of State for India in Council	...	29, 32
7 Bom L R 497	... v. ————	...	4, 5, 15, 19
7 Bom L R 659 (660)	... Trimbakrao Anandro Mantri v. Balwantrao Narayanrao Mantri	...	4, 14

* This ought to be A.W.N., 1902, p. 161.

† This ought to be 4 B.H.C. 1 (A.C.J.)

‡ At p. 8 this is wrongly printed as 4 B.H.C. 101 (A.C.J.).

§ 10 B.H.C. 40, ought to be 10 B.H.C. 400.

Bombay Law Reporter—(Concluded).			PAGE
9 Bom L R 889 ...	Damodar Vamanbawa v. Satyabhamabai ...		26
11 Bom L R 1369...	Ohhaganlal Bhagvandas v. Pranjivan Shirlal ...		85
12 Bom L R 267 ...	Sardar Ganpatrao Moharkar v. Sardar Anand Rao, Baji Sahib ...		28
Calcutta Law Journal.			
11 C L J 281 ...	Sardar Ganpatrao Moharkar v. Sardar Anandrao, Baji Sahib ...		28
Calcutta Law Reports.			
6 C L R 19 (20) ...	Bhojrub Chunder Roy v. Madhub Chunder Sen ...		37
Calcutta Weekly Notes.			
6 C W N 796 ...	Chhoti Narain Singh v. Musst. Rameshwar Koor...		37
8 C W N 665, 666...	Jiban Krishna Ghosh v. Sripati Charan Dey ...	11, 15, 18, 33, 34, 35, 37	
14 C W N 310 ...	Sardar Ganpatrao Moharkar v. Sardar Anandrao, Baji Sahib ...		28
15 C W N 470 ...	Rai Sarat Chandra Das Bahadur v. Secretary of State for India in Council ...		16
Weekly Reporter.			
7 W R 169 ...	_____		36
10 W R 13 (P C) ...	Ruttonji Edulji Shet v. The Collector of Thana ...		6
23 W R 378 ...	Shahzadee Hazara Begum v. The Collector of Burdwan ...		4, 21
Bengal Law Reports.			
5 B L R 983* ...	Ramkrishnarao v. Nanarao ...		6
Madras High Court Reports.			
4 M H C 277 ...	Mahomed Abdul Vakab Sahib v. Comandur Rama- samy Aiyangar ...		36
5 M H C 371 (372).	Referred Case No. 33 of 1870 ...		36, 37
5 M H C R 422 ...	Pattaray Mudali v. Audimula Mudali ...		6
Madras Law Journal.			
17 M L J 139 ...	Venkata Narasimha Ramachandra Row v. Raja Kamadana Lakshminarasamma Row ...	18, 21, 26	
17 M L J 549 ...	Venkateswara Iyer v. The Secretary of State for India in Council ...	4, 11, 12, 15	
20 M L J 146 ...	Sardar Ganpatrao Moharkar v. Sardar Anandrao Baji Sahib ...		28
The Madras Law Times.			
2 M L T 33 ...	Subbaraya Mudali v. Velayuda Chetty ...	4, 8, 15, 33, 34, 38, 39	
2 M L T 188 ...	Raja Kamadana Venkata Narasimha Ramachandra Row v. Raja Kamadana Lakshminarasimha Row. ...	18, 21, 26	
3 M L T 104 ...	Venkateswara Iyer v. Secretary of State for India in Council ...	12, 15	
5 M L T 388 ...	Anna Bibi v. Najm-un-Nissa ...		33

TABLE OF CASES.*

5

	The Madras Law Times—(Concluded).	PAGE
6 M L T 182	... Bhimaraja Varadayya v. Manchu Konda Nammal- varu	18, 38
7 M L T 53	... Sardar Ganpatrao Moharkar v. Sardar Anandrao, Baji Sahib	28
	Oudh Cases.	
12 O C 323	... Debi Prasad v. Nawab Amir Ali Khan	16
	Punjab Record.	
36 P R 1874	... Alma Singh v. Jit Singh	20
9 P R 1875	... Khushal Singh v. Bassawa Singh	22
10 P R 1875	... Ahmadyar v. Alla Jowaya Khan	20
1 P R 1876.	... Nawab Azmat Ali Khan v. Mussammat Lalli Begam	20
17 P R 1882	... Nawab Muhammad Azmat Ali Khan v. Mussam- mat Lalli Begum	27
181 P R 1882	... Bhai Badan Singh v. Partab Singh	11
160 P R 1884	... Jafar Shah v. Bahadar Shah	26
12 P R 1886 (Rev)	... Nahir Ali Khan v. Kalu	27
11 P R 1887	... Diwan v. Karm Chand	20
77 P R 1891	... Nawab Muhammad Rab Nawaz Khan v. Nawab Hafiz Abdulla Khan	18, 22
157 P R 1899*	... Gabna v. Ikhlas Khan	27
25 P R 1900	... Ghulam Nabi v. Bisharat Ali	20
108 P R 1901	... Mussammat Zinath v. Murtaza Khan	27
95 P R 1906	... Muhammad Qamar-ud-din v. Lachmi Nath	17, 34
96 P R 1906	... Qamar-ud-din Khan v. Mani Ram	17, 36
341 P R 1906	... Muhammad Qamar-ud-din Khan v. Lachmi Nath and Another	34
344 P R 1906	... Qamar-ud-din Khan v. Mani Ram	36
	Punjab Law Reporter.	
P L R (1900) 361†	... Mehr Nishan v. Muhammad Kasim Ali Khan	39
83 P L R 1907	... Muhammad Qamar-ud-din Khan v. Lachmi Nath.	17
	Moore's Indian Appeals.	
11 M I A 295	... Ruttonji Edulji Shet v. The Collector of Thana	6, 8
14 M I A 40	... Syud Tuffuzzool Hossein Khan v. Rughoonath Pershad and Ladhe Pershad	37
	Indian Appeals.	
8 I A 77 (P C)	... Maharavel Mohansingji Jcysingji v. The Govern- ment of Bombay	8, 11, 15, 16, 22
9 I A 28	... Nawab Mahammad Azmat Ali Khan v. Mussamat Lalli Begum	27
17 I A 181	... Bishambhar Nath v. Nawab Imdad Ali Khan	37
24 I A 148	... Deo Kuar v. Man Kuar	18, 25, 26
	Indian Cases.	
2 Ind Cas 100	... Amna Bibi v. Najm-un-nissa	33

* 157 P. R. 1899 ought to be 154 P.R. 1889.

† P L R (1900) 361 ought to be 357.

TABLE OF CASES.

Printed Judgments (Bombay).		PAGE
P J 1891, p. 276 ...	Venkaji Balkrishna v. Saijerao Appagirao	27
P J 1891 p. 320 ...	Daji Nilkant Nagarkar v. Ganpatrao Nilkant	12
P J 1892, p. 200 ...	Vishwanath v. Ganesh	28
P J 1892, p. 350 ...	Ramsanghava v. Khushalsanji	25
P J 1893, p. 352 ...	Balkrishna Ramchandra v. Balaji Shamji	25, 29
P J 1894, p. 44 ...	Dharamdas Sambhudas v. Hafasji	30
P J 1895 p. 42 ...	Ram Dixit v. Hari Sadashi	6
P J 1896, p. 161 ...	Chidambagauda v. Madhava Rao	29

THE PENSIONS ACT, 1871.

(ACT XXIII OF 1871).

[Passed on the 8th August, 1871.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1845	XXXI	Pensions of Soldiers, Bombay ...	Rep. Act VI of 1849.
1871	XXIII	Pensions	Rep. in part, Act XII of 1891 ; Amended (locally), Act XXI of 1886.
		N.B.— <i>Vide</i> Schedule to this Act, <i>infra</i> .	

An Act to consolidate and amend the law relating to pensions and grants by Government of money or land-revenue.

WHEREAS it is expedient to consolidate and amend the law relating to pensions and grants by Government of money or land-revenue ; It is hereby enacted as follows :—

Preamble.

I.—*Preliminary.*

Short title.

1. This Act ¹ may be called the Pensions Act, 1871 :

Extent of Act.

It extends ² to the whole of British India ;

Commencement.

And it shall come into force ³ on the date of the passing thereof, * * * * *

(Notes).

I.—“*This Act.*”

(1) **Statement of objects and reasons.**

For —, See Gazette of India, 1871, Pt. V, p. 141.

A

(2) **Proceedings in Council.**

For —, See Gazette of India, 1871, Pt. v, pp. 314, 401, 683, 1056, [1147. B

(3) **Legislative changes.**

The words “ but not so as to affect any suit in respect of a pension or grant of money or land-revenue which may have been instituted before such date ” were repealed by the repealing and Amending Act, 1891 (XII of 1891). C

(4) **Nature of Act.**

The Pensions Act, 1871, is an Act to consolidate and amend the law relating to pensions and grants, by Government, of money or land revenue.

1.—“This Act”—(Continued).

Looking at the preamble to the Pensions Act and to the course of previous legislation it is clear that the intention of the Government of India, in consolidating and amending the laws on the subject, was to reserve to itself the right of considering the validity of claims in all parts of India to pensions and similar allowances conferred and granted by itself instead of allowing them to be submitted for adjudication to its own Courts. 2 B. 99 (103). D-1

(5) Act XXIII of 1871, Construction of, rule as to.

(a) An enactment of a character so arbitrary as Act XXIII of 1871, which purports to deprive the subject of his right to resort to the ordinary Courts of Justice for relief in certain cases, ought to be construed strictly, and the Court should not extend its operation further than the language of the Legislature requires. 1 B. 523 (529); 531; 30 B. 101=7 Bom. L.R. 659; 29 B. 480 (490)=7 Bom. L.R. 497; 20 A. 396 (398); 18 B. 525 (532). E

(b) An instance of a refusal by the High Court of Calcutta to give it any such extended constructions is the case reported in 23 W.R. 378. 1 B. 523 (529). F

(c) These cases show that the Court is careful to keep the operation of the Act within its proper limits. (*Ibid.*) G

(d) The construction of the Act is not free from difficulty. 30 M. 153 (154)=2 M.L.T. 33. H

(e) The argument “that the Legislature could not have intended to guard pensions etc., from direct attack.....and yet allow them to be sold up in execution of money or other decree,” is unsustainable in view of the principle of construction laid down in 1 B. 523; 16 B. 731 (736). I

(f) The Pensions Act must be construed strictly, and the two cases (1 B. 75 and 523) show that while it is material to consider the nature of the grant for the purposes of the Pensions Act, where the suit relates to money or land revenue, the point is not material where the suit relates to the holding of land, and not to a grant of money or land revenue at all. 29 B. 480=7 Bom. L.R. 497. J

(6) The Pensions Act, application of.

The Pensions Act applies to religious endowments, as well as to personal grants. 22 B. 496; 16 B. 537 P.J. 1896, p. 663. But see 2 M. 294; 5 M. 302; 4 M. 283; 17 M.L.J. 549 (*contra.*) K

(7) *Yaumia* allowance—Pensions Act.

Pensions Act (XXIII of 1871) is not applicable to a *yaumia* allowance granted to a religious institution. 11 M. 283; 2 M. 294. L

(8) *Matam* Service Inam—Pensions Act.

A *Matam* Service Inam granted for the support of the family of the grantee of a *matam* and described as a religious endowment is not a personal grant, but one primarily intended for the maintenance of the endowment; and, therefore, the provisions of Pensions Act (XXIII of 1871) are not applicable to it. 5 M. 302; 2 M. 294. M

(9) Share in allowance paid from the Government Treasury.

A suit for a declaration that the plaintiff is entitled to a—is barred by Act XXIII of 1871 (Pensions Act). 1 B. 75. N

I.—“This Act”—(Continued).

(10) Suit by assignee of pension under the Pensions Act.

(a) A—~~is not maintainable as no such assignment could legally be made.~~ 6 A. 630. But see 7 A. 886. O

(b) But it is otherwise where such assignment was made before the passing of the Pensions Act. 7 A. 886. P

(11) Suit for recovery of abkari revenue.

A suit for recovery of certain abkari revenue under a *sanad* granting “water, trees, &c., present and future cesses, and taxes and assessments” pertaining to certain villages granted in *inam*, was held to be governed by the Pensions Act, XXIII of 1871, as the tax in question was a money tax on the imposition of which, the grant, if it entitled the *inamdar* to the tax, operated as a grant of money to be derived from the tax. 14 B. 573. Q

(12) Suit for a declaration of plaintiff's right to officiate as *patil*.

A suit for a declaration of the plaintiff's eligibility to officiate as *patil* of a village is not prohibited by Act XXIII of 1871. 1 B. 531 [1 B. 75, D.] R

(13) Suit to recover cash allowance from *inamdar*, by trustee of idol.

Plaintiff, as the trustee of an idol, sued for recovery of a cash allowance from the *inamdar* of a village on the allegation that the latter, who was to receive the revenues of the village subject to the payment of the allowance to the idol, had misappropriated the same for three years before suit. Held, the claim was one falling within the Pensions Act. 16 B. 537. S

(14) Lands held free from assessment—Grant of land revenue—Distinction—Application of Pensions Act (XXIII of 1871).

Freedom from liability to land revenue is not identical with holding a grant of land revenue, any more than the extinction of an easement by a person becoming sole proprietor of the property, servient as well as dominant, is a grant of the easement. The land revenue arising from a man's own holding, when it is remitted and the land pays nothing, is rather extinguished than granted. 1 B. 75. T

Lands held free from assessment, being lands held under a grant bestowing them, and not merely the Government revenue arising from them, do not, therefore, come within the scope of the Pensions Act (Bom. Sp. Ap. 507 of 1873, F.). (*Ibid.*) U

Grants of land revenue-free, as distinguished from grants of revenue, do not come within the purview of this Act. 7 M. 191. V

There exists a broad distinction between claims to the soil, to which the Pensions Act, 1871, is inapplicable, and claims to moneys payable by Government, to which the provisions of the Pensions Act, 1871, apply. 29 B. 480=7 Bom. L.R. 497. W

A suit to recover possession of land or to obtain a declaration of a right to hold land, being distinct from a suit for a grant of money or land revenue, does not come within the operation of the Pensions Act. 29 B. 480=7 Bom. L.R. 497. X

1.—“This Act”—(Continued).

(14-a) C.P.C., S. 43—“The whole claim”—Pensions Act, XXIII of 1871.

S. 43 of the C.P.C. does not apply to a claim which falls under the Pensions Act, XXIII of 1871. P.J. 1895, p. 42. Y

The words “the whole claim” as marked in the case at 5 M.H.C.R. 422 must be understood with the qualification in so far as it is cognizable by the Court in which the suit can be lawfully entertained. P.J. 1895, p. 42. Z

(15) *Sanad*, construction of—Ownership in soil—When grant of villages may not fall under Pensions Act.

(a) Although *Sanad* grants in *inam*, *saranjam*, etc., are generally speaking, more properly described as alienations of the royal share in the produce of the land, i.e., of land revenue, than grants of land, yet it is not invariably correct in all cases. (4 B.H.C., 7 A.C.J., D.). 1 B. 523. A

(b) If words are employed in a grant, which expressly, or by necessary implication, indicate that Government intends that, so far as it may have any ownership in the soil, that ownership shall pass to the grantee, neither Government, nor any person subsequently to the date of the grant deriving under Government, can be permitted to say that the ownership did not so pass, unless there are in the grant such detailed provisions as may show that such words are limited in their operation. (*Ibid.*) B

(c) Accordingly, a *sanad* by the State purporting to grant a village in *inam*, “including the waters, the trees, the quarries, the mines and the hidden treasures, but excluding *Hakdars* and *Inamdars*,” could mean only a grant by the State of such proprietary right as it had in the soil of the village to the grantee; and the State cannot say that such words as above mean nothing but land revenue. (6 B.H.C. 191 A.C.J. & 11 M.I.A. 295 = S.C. 10 W.R. 13 (P.C.) D.). (*Ibid.*) C

Also, the saving of the rights of *Hakdars* and *Inamdars*, does not prevent the property in soil, so far as it can be regarded as having been vested in Government, from passing to the grantee. (10 B.H.C. 471, F.). (*Ibid.*) D

(d) Where the grant sets forth the *ashtabham*, or eight usual incidents of ownership, which include *sidha sadhya*, “land and its produce,” the specific mention of ‘*pashanam* or rocks and minerals’ must be taken to be rather an indication that nothing is meant to be omitted which goes to the constitution of complete ownership, than that the privileges granted are merely formal. 3 B. 452. E

(e) The decision in 1 B. 523 does not weaken the principle that ordinarily, grants in *inam*, and much more so, grants in *jaghir* or *saranjam*, are to be regarded as grants of land revenue, and nothing more. 6 B. 598. F

(f) In the absence of words expressly granting it, the ownership, neither of the soil nor of cultivated or uncultivated lands passes by the grant of the *vatandari khatship*. 12 B. 534. G

(g) In order that a grant of villages may not fall under the Pensions Act, it must be a grant of the freehold therein, or full ownership in the soil, qualified in no way by any reversion suggested by the terms of the grant, in regard to future succession or transmission. 12 M. 98. H

(h) A suit brought in relation to the management of *saranjam* lands, is *prima facie* one not included in the Pensions Act. 16 B. 596. I

(i) A *saranjam* or *jaghir* is *prima facie* and in the absence of express words or necessary implication to the contrary, a grant of the royal share of the revenue only, and not of the soil. 5 B. L.R. 983. J

1.—“*This Act*”—(Concluded).

- (j) Case where a grant was held not to be one of land revenue, and therefore that it did not fall within the purview of the Pensions Act. 28 A. 104 (108)=1905 A.W.N. 206. K
- (16) Suits relating to lands held under Government grant—Nature of claim and title, determination of.
- (a) In suits relating to lands held under a grant made by Government, the determination of the nature of the claim and title of the grantee must rest on the terms of the grant as far as other persons' rights in them are not affected thereby, irrespectively of the use which the grantee may have made of the property conveyed by it. 1 B. 523. L
 - (b) Government cannot, by the alienation of its own rights in a village, albeit that the *sanad* purports to grant the village as a whole, extinguish or affect any substantive right therein appertaining to third persons, or convey to the grantee any better estate or interest than was vested in Government. 1 B. 523. M
 - (c) It is the original grant which determines whether the Pensions Act is applicable, and not the actual rights which the grantee, as a matter of fact, may have enjoyed in it. 18 B. 525. N
 - (d) A grant by Government, whether Native or British, of a village, is subject to all existing rights against Government, whether or not the deed of grant contains an exception or reservation of such rights. 4 B. 643. O
 - (e) The State cannot, by its grants, destroy rights in the lands which are good against itself; and it matters not, whether the *sanad* or grant contains a reservation of such rights. 6 B. 244. O-1

2.—“*Extends.*”

(1) Act has been declared in force in.

This—Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), S. 4 (1) and Sch. I. P

The Arakan Hill District (except Ss. 1 and 2 and the schedule) by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), S. 3. Q-

British Baluchistan by the British Baluchistan Laws Regulation, 1890 (1 of 1890), S. 3. R

It is included, in the Schedule to the Santhal Parganas Settlement Regulation, 1872 (III of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899). S

(2) Act applies.

The—, to certain allowances known as the Oudh *wasikas* as if they were pensions of the classes referred to in Ss. 4 and 11 of the Act. See the Oudh *Wasikas* Act, 1886 (XXI of 1886), S. 2. T

3.—“*It shall come into force.*”

Act not retrospective.

The Pensions Act (XXIII of 1871) is not retrospective. 1 B. 203 (207). 2 B. 294. U

And, therefore, it was held inapplicable to a case where a *hak* was attached in execution of a mortgage-deed, before the Act came into force, and a subsequent suit was necessitated by an act of the defendant who got the original attachment removed. (*Ibid.*) V

Enactments re-
pealed.

2. The enactments mentioned in the Schedule hereto annexed shall be repealed to the extent specified in the third column of the said Schedule.

Saving of rules.

But all rules in regard to the award and payment of pensions or grants of money or land-revenue, and the identification of the persons entitled to receive them, made under any such enactment, shall be deemed to have been made under this Act so far as they are consistent therewith.

Interpretation-section.

3. In this Act, the expression "grant of money or land-revenue" includes² anything payable on the part of Government in respect of any right, privilege, perquisite or office.

(Notes).

1.—"Grant of money or land revenue."

(1) "Grant of money or land revenue"—Reg. IV of 1831.

(a) The term "grant of money or land revenue" appears to be borrowed from the Madras Regulation IV of 1831 which is one of the statutes repealed by the Pensions Act. 4 B. 432 (437). W

(b) In that Regulation the term is made to include pensions; and, read in combination with Act XXIII of 1871, the Regulation exempts from attachment for debt not only pensions, but also other allowances, some of which, would perhaps, fall within the definition of a grant of money or land revenue in the Pensions Act, as well as within the same term in Regulation IV of 1831. (Ibid.) X

(c) But in passing the Pensions Act, the Legislature seems to have thought it desirable that exemption from attachment for debt should be confined to pensions, properly so called, and should not be tended to other grants of money or land revenue. And it does not appear to us difficult to understand why the State should have thought it right, to secure the pensions of its old servants and of dethroned princes, but should not have cared to protect from attachment grants made to families of freebooters as compensation for the loss of their blackmail. (Ibid.) Y

(2) *Ibid.*—Meaning.

(a) The meaning of the expression "grant of money or land revenue" although extended by S. 3 of Act XXIII of 1871, to include "anything payable on the part of Government in respect of any right, perquisite, or office" is not of so wide a range as to include a grant of the proprietorship of the soil, or any suit involving the rights of a proprietor of the soil. (4 Bom. H.C. Rep. 1 A.C.J.; 6 Bom. H.C. Rep. 191 A.C.J.; 11 M.I.A. 295, D., 1 B. 203, R.) 1 B. 523 (530). Z

(b) Payments of money for purposes other than those stated may be 'grants of money or land revenue' within the meaning of S. 3, but the provisions of S. 12 will not apply to them. (4 B. 432, F.; 30 M. 153=2 M.L.T. 33. A

(c) S. 3 of the Act explains the expression "grant of money or land revenue" as including anything payable on the part of the Government in respect of any right, privilege, perquisite or office. 5 B. 408 (P.O.)= 8 I.A. 77. B

1.—“Grant of money or land revenue”—(Continued).

- (d) There is no ground for limiting the construction of the section to rights *ejusdem generis*. Therefore, these words should not be construed as applicable only to rights of the nature of pensions. These words should be taken to extend to rights such as a *toda-giras-haks*. 5 B. 408 (P.C.)

(3) *Ibid.*—Examples.

Grant made as compensation for abolition of hereditary office in the grantees's family, 30 M. 153=2 M.L.T. 33.

But not zamindari granted not revenue free, 26 A. 617=1 A.L.J., 338.

Nor grant of proprietorship of soil, 1 B. 523.

(4) *Toda-giras-haks*—Their origin and history—Nature of such *haks*.

- (a) *Toda-giras-haks* had their origin in arbitrary exactions made by strong and powerful persons, who obtained the name of *girasias*, upon the village community. These arbitrary exactions were in some way commuted into fixed payments by the villagers, in consideration of which the *girasias*, gave up their claim to make arbitrary exactions, and also undertook to defend the villagers against the exactions of others. 5 B. 408 (P.C.)

- (b) “*Toda-Giras*” *haks* are thus described by the Judicial Committee of the Privy Council in 10 Bom.H.C. Rep. 281. “It is sufficient to state that these annual payments, though originally exacted by the *Grasias* from the village communities in certain territories in the West of India by violence and wrong, and in the nature of black-mail, had, when those territories fell under British rule, acquired by long usage a quasi-legal character as customary annual payments; and that as such they were recognized by the British Government, which took upon itself the payment of such of them as were previously payable by villages paying revenue.” 1 B. 203 (206).

- (c) It will thus be seen that these *haks* have acquired the character of a right and have been recognized as a species of property, however unlawful their origin may have been. 5 B. 408 (P.C.)

- (d) Payments of this description fall within the definition of “a grant of money or land-revenue” in Act XXIII of 1871. 1 B. 203 (206).

- (e) It was, no doubt, stated in the Legislative Council, in introducing the Bill that the leading principle of the main provisions of the law was that, as the bestowal of pensions and similar allowances was an act of grace or state policy on the part of the ruling power, the Government reserved to itself the determination of all questions affecting the grant or continuance of these allowances. But, whatever may have been the intention, the Act itself seems to us, to have been so framed as to oust the jurisdiction of the Civil Courts in regard to the other allowances than those originating in an act of grace or state policy. 1 B. 203 (206).

(5) *Toda-giras-hak* if founded on contract with Government.

As to the contention that the action here was founded on contract, and that, if it was embraced by the Pensions Act, then all contracts for the payment of money by the Government must be held to be included by it, it was held that the Act applied only to grants of money in respect of,

1.—“Grant of money or land revenue”—(Concluded).

or in substitution for some right, privilege, perquisite or office, and that although, in some sense, it may be said that the arrangements made between the Government and the *girasias* were in the nature of contract, yet as that contract, if it were one, resulted in the abandonment, on the part of the *girasias* of their claim to make collections from the villagers, and in the allowance of money by the Government in lieu of them, such allowance fell within the operation of the Pensions Act. 5 B. 408 (P.C.) K

(6) Decree before the date of the Act.

A suit in respect of “*toda-giras-haks*” cannot be instituted without the certificate required by S. 6 of the Act. Where a mortgagee of such *haks* had, before the date on which the Act came into operation, obtained a decree for the recovery of his mortgage debt from the mortgaged *haks* and from the mortgagor personally, and a fresh suit was necessary to enforce execution of that decree against those *haks*. Held that the Act did not apply to such fresh suit. 1 B. 203. L

Semble that the word “right” in S. 3 of Act XXIII of 1871 is equivalent to the word *hak* in its restricted sense of “allowance” or “fee”. 1 B. 203. M

2.—“Includes.”

Construction of Act—“Includes”, Scope of the term.

The Pensions Act must be construed strictly; but the inconclusive verb “includes” is not exhaustive; and S. 3 of the Act is an extension of the ordinary meaning of the expression “grant of money or land revenue,” and is not to be treated as limiting the meaning of S. 4. 16 B. 537. N

II.—Rights to Pensions.

(Notes).

1.—“Rights to Pensions.”

“Rights to pensions” Significance of the heading.

It is true that the second division of the Act is headed “rights to pensions” only, although the sections contained in that division deal with grants of money or land revenue, as well as with pensions; but this appears to be due merely to the carelessness of the draftsman and not to affect the general tenor of the Act, which clearly points the distinction between pensions and all other grants. 4 B. 432 (436). O

4. Except as hereinafter provided ¹, no Civil Court ² shall entertain any suit ³ relating to ⁴ any pension or grant of money ⁵ or land-revenue ⁶ conferred or made by the British or any former Government ⁷, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted.

Bar of suits relating to pensions.

(Notes).

General.

(1) Nature of section.

- S. 4, is rather of a comprehensive character. 8 C.W.N. 666. O-1

That section, in unmistakable terms is more comprehensive than the preamble and in 7 M. at p. 195 Turner, C.J. remarks that the Pensions Act contemplates money payments to be received through the Collector, or recovered from persons bound to pay revenue. (2 B. 99. Appr.), 16 B. 537 (540). P

In 1 B. 75 (79), the High Court in construing S. 4, did not narrow the ordinary grammatical meaning of that section so as to exclude suits between private persons. 16 B. 537 (540). Q

(2) Applicability of Pensions Act, S. 4.

- (a) S. 4, Pensions Act (XXIII of 1871), applies to a heritable right to receive land revenue granted by Government as a reward for services rendered. 25 A. 73 (74). R

- (b) A suit by co-trustees of certain *dargas* for an account of the profits of such *dargas*, which consisted of cash allowance from the Government, requires a certificate under S. 4 of the Pensions Act. 22 B. 496. S

- (c) Emoluments for religious or pious purposes do not fall within the purview of the Pensions Act. The section applies only to personal grants. 17 M.L.J. 549; see, also, 2 M. 294; 7 M. 191; 5 M. 302; 6 M. 361; 11 M. 283 but see 22 B. 496. T

- (d) It also applies to inam grants of a political character. 7 M. 191. U

1.—“Except as hereinafter provided.”

(N.B.—For notes, see under S. 6 *infra*.)

(1) *Toda-giras-hak*—Discontinuance of payment by Government—Suit to recover arrears.

This was a suit brought by the appellant in the District of Surat, claiming as the adopted son of M.J.B., to recover from the Government of Bombay certain payments in respect of a *toda-giras-hak* formerly levied by his ancestors upon certain villages in the Surat District. The Government had for many years made payments on account of this *toda-giras-hak* (divided into three parts) to three different branches of the appellant's family; his adoptive father through whom he claimed, being paid one-third. The father died in 1865, and upon his death the Government either refused to recognise the plaintiff as the adopted son, or considered that, as an adopted son, he was not entitled to receive the payments, and discontinued them. The action was brought, in consequence of that discontinuance, to recover the arrears from the time of the father's death.

Held by the Privy Council affirming the judgment of the two lower Courts that the suit fell under the Pensions Act, XXIII of 1871, S. 4, which prohibits the cognisance by a Civil Court of such suits, save as provided by that Act itself. 5 B. 408 (F.C.)=8 I.A. 77. Y

(2) Suit *re* grant of land revenue, etc.—Certificate.

S. 4 of the Pensions Act does not render any suit relating to the grant of land revenue, etc., without the Collector's certificate, bad *ab initio*; it only precludes the Civil Court from taking cognisance of it until the certificate is procured. 17 B. 169. W

(3) Suit relating to land held revenue free.

No certificate, under S. 4 of Pensions Act, is necessary for a suit relating to property in a land, the revenue of which is released. 131 P.R. 1882. X

2.—“Civil Court.”

(1) Forest Settlement Officer.

A Forest Settlement Officer is a “Civil Court” for the purposes of the Pensions Act. 17 M. 193. Y

(2) Suit for a percentage of forest income.

A Forest Officer has no jurisdiction to entertain a —. 17 M. 193. Y-1
And such a suit brought by discharged forest karnams is barred by S. 4 of the Pensions Act. 17 M. 193. Z

(3) Jurisdiction of Agent for Sardars—S. 4 of Act XXIII of 1871 (Pensions).

S. 4 of the Pensions Act determines the jurisdiction of Agent for Sardars under Regulation XXIX of 1827 though they are not Civil Courts. 17 B. 224. A

(3-a) Reg. XXIX of 1827, S. 6—Pensions Act—Ordinary rules—Jurisdiction of Judges.

The expression “ordinary rules” in S. 6 of Reg. XXIX of 1827 means the rules for the time being in force determining the jurisdiction of the Judges referred to in that section and S. 4 of Act XXIII of 1871, being now a part of the “ordinary rules” determining the jurisdiction of the Civil Courts, is applicable to the Court of the agent for Sardars in the Dekhan, though the Court is not a Civil Court in the ordinary acceptation of the term. P.J. 1891, p. 320. B

(4) *Deshmukhs*—Civil Court's Jurisdiction.

A suit in a Civil Court by a hereditary *deshmuk* for a percentage on the cash revenue and on the grain revenue is prohibited by Pensions Act of 1871. 6 B. 209 following 2 B. 99 (P.C.). C

(5) Suit in respect of Endowment granted by Government.

It has been held by this Court in a series of decisions that endowments for religious or pious purposes do not fall within the purview of S. 4 of the Pensions Act which only applies to personal grants. Hence the Civil Courts have jurisdiction to entertain suits in respect of such Endowment granted by Government. (22 B. 496, *Diss.*). The ruling in 5 B. 408 is not inconsistent with the present decision. 31 M. 12 = 3 M.L.T. 104 = 17 M.L.J. 549. D

(6) Agreement by Government to pay money in lieu of *toda-giras-haks*.

The claim against the Government in this suit, which was based on an alleged agreement made by Government, *viz.* an agreement to pay moneys from the Government treasury in lieu of the *toda giras-haks*, which the *girasias* used to levy directly from the villages, was held to fall within the prohibition contained in this section against Civil Courts entertaining any suit relating to any grant of money made by the British Government, whatever may have been the consideration for such grant, and whatever may have been the nature of the payment, claim, or right for which such grant may have been substituted. 4 B. 437 (N). [on appeal, 5 B. 408 (P.C.)]. E

(7) Claim against Government for money in lieu of *toda-giras-haks*—Jurisdiction of Civil Courts.

The plaint in this case contained an express prayer for a declaration, not that the Government should collect and pay over the *giras* to the plaintiffs,

2—"Civil Court"—(Continued).

but that the plaintiffs are entitled to take it hereditarily, from the Government treasury and, in fact, treat themselves as entitled to a grant of money out of the treasury in lieu of the levy which their ancestors were making from the villages, and such claim was held to come within the scope of the prohibition of the jurisdiction of Civil Courts by the Indian Pensions Act, in respect of suits relating to grants of money made by Government. 4 B. 443 (N). F

(8) Resumption of *jaghir*—Suit to recover arrears.

Where on a *jaghir* granted for the support of the grantee and his relatives being resumed by Government substituting a money allowance instead, a suit by a relative of the original grantee to recover, as arrears of his share, money received by the representative of the grantee, is barred by this section. 4 M.B. 41. G

(9) Reg. XXIX of 1827, S. 6—Act XXIII of 1871 (Pensions), S. 4—Bombay Jurisdiction Act (X of 1876), S. 4—Act XI of 1852, effect of attachment under—Release of attachment—Adverse nature of possession by Collector subsequent to.

- A decree had been awarded to the plaintiff's predecessor-in-title, as mortgagee, giving him possession and enjoyment of certain inam lands and of payments from the Government treasury, called "mokasa amals." The possession of the decree-holder and his successors continued down to 1852, when the inam happened to be attached on behalf of the Government, pending an enquiry into the title of its holders under Bombay Act, XI of 1852. On the attachment having ceased in 1865, the Government had ordered the restoration of the property to the decree-holder and his successors, and in 1883, the plaintiff, as such successor, instituted this suit for getting possession of the inam lands and recovering arrears of the amals due. H

This suit was held to be not cognisable by the Civil Courts. Under Reg. XXIX of 1827, S. 6, the Government thinking fit to appropriate an inam, to refuse payment of an annuity, or to exact land-tax where the land owner averred it was not due, could not be sued for such acts in the Civil Courts. And Acts XXIII of 1871 and X of 1876, excluding the jurisdiction of the Civil Courts over suits relating to pensions and grants of land revenue, and over claims to hold land wholly or partly free from the land-tax, though they preserved fully acquired rights and even *inchoate* ones involved in pending suits, created no rights to relief against the Government where none subsisted before. I

Plaintiff therefore had no remedy under Reg. XXIX of 1827 and the above-mentioned Acts, and, if he had any, it was barred by limitation before the institution of the present suit. Against the limitation pleaded in bar of the suit on behalf of the Government, it was urged that the property having been taken possession of by the Government with a view to adjudicating on the rights set up to it, must be held to have been in *custodia legis* and then retained by the Government on a constructive trust which would endure until the restoration of the property, but it was held that the Government having seized the lands in question as its own and not as on behalf of any rival claimants thereto, they could not be properly deemed to have been in *custodia legis* and

2—"Civil Court"—(Concluded).

that the claim to them was therefore barred. Also, the plaintiff's right to the periodical payments, even if otherwise cognizable, would be barred by the subsequent total discontinuance of them for more than twelve years before the suit. 11 B. 222. J

(10) Question as to person on whom jagir is to be granted.

The ——— on the death of the last holder, is one which exclusively belongs to the Government; and such questions are to be determined on purely political considerations. Civil Courts cannot review the decision of the Government on such questions. 17 B. 481 (P.C.). K

3—"Suit."

(1) Suit—Execution proceedings.

The Pensions Act must be construed strictly and the word "suit" in S. 4 of the Act does not include execution proceedings. 7 Bom. L.R. 660 & 30 B. 101; 16 B. 731; 1 B. 523. L

(2) *Desaigiri hak*—Sale.

The word "suit" in this section does not include execution proceedings. The Collector's certificate is not necessary to validate the sale of a *desaigiri hak* in execution of a decree. 16 B. 731. M

(3) Suit to recover lands forming the emoluments of office of *ambalam*.

A ——— in a village is not cognisable by Civil Courts. 26 M. 490. N

(4) Political pension granted in substitution of land resumed.

(a) A ——— is impartible, 2 B. 346. O

(b) Hence, no suit can be maintained for a declaration that such pension is partible. 2 B. 346. P

(5) Suit for declaration that a person is entitled to *Stanom*.

Where a person, receiving *malikana* allowance from Government payable to various *stanomdars*, refuses to pay to one of them, and that one brings a suit for a declaration that he is entitled to the *stanom*, the suit does not fall within the scope of S. 4 of the Pensions Act, as the suit is only for the declaration of status and not from any money claim, etc. 13 M. 75. Q

(6) Confirming by Government of an *Inam*—Effect.

Although the confirming by the Government of an *inam* granted by a Zamindar may amount to a re-grant of it, yet, as it is only a grant of land free of revenue and not a grant of land revenue, the Pensions Act has no application to suits relating to it. 21 M. 310. R

(7) Suit for money payment substituted for *Jaghir*.

A suit for the plaintiff's share of certain money-payments, which were substituted by the Government in lieu of a *jaghir* granted to the original grantee, fell within this section. 4 M. 341. S

(8) Suit by grantees to contest right of Government to resume *Inam*.

A ———, granted for the support of a chattram and to feed Brahmins, will lie. 6 M. 361. T

4.—“*Relating to.*”

(1) Term “relating to” be construed strictly.

(a) The phrase “relating to,” as occurring in an enactment restrictive of the right to sue, must be construed strictly, *i.e.*, in favour of the right to proceed. 29 B. 480=7 Bom. L.R. 497; 16 B. 596. U

(b) The words “no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue,” do not cover a suit to recover the possession of land or to obtain a declaration of right to hold land. (*Ibid.*) Y

(2) Suits to recover land exempt from revenue.

S. 4 of the Pensions Act 1871 is entirely silent as to suits to recover possession of land the revenue of which has been remitted. (*Ibid.*) W

(3) *Saranjam*—Lands—Right of management.

Where a suit was brought in relation to the management of *saranjam* lands, held, that the suit was *prima facie* one not included in the Pensions Act. (1 B. 523, R.). 16 B. 596. X

(4) Grant by Government of right to receive land revenue for service rendered.

S. 4 of the Pensions Act applies to a heritable right to receive land revenue granted by the Moghul Emperors as reward for services rendered. 25 A. 73=22 A.W.N. 187. Y

(5) Suit relating to management of *Stanom*.

Pensions Act, S. 4 is not applicable to the case relating to the management of the *Stanom* of Palghat Raja. 18 M. 75. Z

5.—“*Pension or grant of money.*”

(N.B.—See Notes under S. 11, *infra*.)

(1) Pension—Not defined.

Pension is not defined in the Act. 30 M. 153 (154)=2 M.L.T. 33; 4 B. 432 (436). A

(2) Pension—Definition—Grant of village upon payment of quit-rent—Construction of document.

See A.W.N. 1905 (206)=28 A. 104. B

For definition of the term “pension.” See 8 C.W.N. 665, 31 A. 382 under S. 11, *infra*. C

(3) Personal grants.

S. 4 of the Pensions Act applies only to personal grants. 3 M.L.T. 104=17 M.L.J. 549=31 M. 12. D

(4) Act does not apply to endowments for pious or religious purposes.

Endowments for religious or pious purposes do not fall within the purview of S. 4 of the Pensions Act and Civil Courts have jurisdiction to entertain suits in respect of such grants made by Government. 2 M. 294; 5 M. 302; 6 M. 361, F.; 11 M. 283; 22 B. 496, *dissented from* 8 I.A. 77 (P.C.), R.; 31 M. 12=3 M.L.T. 104=17 M.L.J. 549. E

(5) *Yaumia* granted to mosque.

A *yaumia* allowance granted to a religious institution does not fall within the purview of the Pensions Act. 11 M. 283; 2 M. 294; but see 22 B. 496, *infra*. F

5.—“*Pension or grant of money*”—(Continued).(6) **Cash allowance allowed to worship of idol—Personal grant.**

Where a plaintiff claimed to be a co-trustee of certain *dargas* and entitled to a share in the management and in the profits thereof, which consisted of a certain cash allowance from Government and sued the defendants for an account and for the recovery of his share, *held*, that the suit, so far as it related to the cash allowance from Government, required a certificate under this section. 22 B. 496. G

A cash allowance attached to the worship of an idol is a grant of money within the meaning of this section.

In 8 I.A. 77, the Lords of the Privy Council say that the expression “grant of money or land revenues” in the Pensions Act is not to be limited to rights *ejusdem generis* with pensions. 22 B. 496 (499). H

(7) **Agreement between Government and public servant—Increase of pay for risky service—Payment during good behaviour, meaning of—Payment on termination of service, if pension—Suit to enforce agreement, if maintainable.**

Held—That the payment of Rs. 300 a month which the Defendant, the Secretary of State for India in Council, had bound himself to make to the plaintiff, a member of the Educational service, for his natural life, by an agreement, dated the 4th September 1881, in consideration of the latter undertaking a journey of investigation to Tibet at the instance of Government, was an increase of pay that the plaintiff was to receive during the time that he was in Government service, and that anything payable to him under the agreement at the termination of such service was a pension within the meaning of S. 4 of the Pensions Act.

A suit by the plaintiff to enforce the agreement was therefore barred by S. 4 of that Act. 15 C.W.N. 470. I

(8) **Instances falling within the section.**

(a) *Wasika allowance*. 12 O.C. 323. I-1

(i) **WASIKA ALLOWANCE, WHETHER A PENSION OR NOT.**

A *Wasika* allowance guaranteed by the British Government under the treaty, dated 17th August 1825, between the King of Oudh and the British Government is a political pension within the meaning of S. 60 (g) of Act V of 1908 and is also to be deemed a pension within the meaning of that term as used in Ss. 4 and 11 of Act XXIII of 1871. 12 O.C. 323. I-2

Such *wasika* allowance does not vest in the Receiver under sub-sec. (2) (a) of S. 16 of Act III of 1907. 12 O.C. 323. J

(ii) **PENSION MONEY AFTER ITS PAYMENT TO THE PENSIONER, CHARACTER OF.**

Once the money due on account of a pension is paid to the pensioner and allowed to blend with his other property it no longer retains its character as pension and it is subject to all incidents to which the property with which it is blended is subject. 12 O.C. 323. K

But the money paid on account of such pension does not vest forthwith in the Court or Receiver under sub-sec. (4) of S. 16. The pensioner must be allowed to receive the money and also allowed an opportunity at his choice (1) of mixing it up and blending it with his other property or (2) of spending it for the purposes for which it was granted to him, *viz.*, to maintain and support himself in a manner suitable to his position in life. (*Ibid.*) (324). L

5.—“*Pension or grant of money*”—(Continued).

(iii) ORDER DIRECTING INSOLVENT TO PAY EVERY MONTH A PORTION OF THE PENSION MONEY TO THE RECEIVER, VALIDITY OF.

An order directing the insolvent every month to deliver to the Receiver a portion of the money received by him on account of the pension is bad in law and cannot be sustained. (*Ibid.*) M

(iv) LIABILITY OF PENSIONER TO ACCOUNT TO THE RECEIVER FOR THE MONEY RECEIVED AS PENSION.

- (a) The pensioner cannot be called upon to account for the money received by him as pension though the Receiver can claim to take possession of any money or other property actually in the hands or possession of the insolvent. (*Ibid.*) N

(b) *Jagir income in a Jagir village.* See 95 P.R. 1906 = 83 P.L.R. 1907.

(c) *Grant of hak haisiyat water rate advantage rent in Jaghir village.* See 96 P.R. 1906. O

(d) *Hereditary deshmukh allowance,* 2 B 99 (P.C.) P

(6) JURISDICTION—Deshmukh :—SUIT RE.

• Where a plaintiff alleging that, as the hereditary *Deshmukh* of certain *mahals* he was entitled to be paid directly by the ryots of these *mahals* a percentage on the revenue thereon assessed, sued to recover a portion of such percentage which had been collected along with the revenue and retained by the Government: *Held* that the claim was “a suit relating to a grant of money or land revenue,” and as such excluded from the jurisdiction of the Civil Courts by this section. 2 B. 99. (P.C.) Q

• A claim by a hereditary *Deshmukh* relating to a grant of land revenue falls within the purview of the Pensions Act. 6 B. 209. R

(e) *Desaigiri hak,* 9 B. 285.

MORTGAGE OF HAK, SALE OF PROPERTY IN EXECUTION OF DECREE ON —ABSENCE OF COLLECTOR'S CERTIFICATE TO MORTGAGEE UNDER S. 6 *infra*—EFFECT OF, ON PURCHASER'S TITLE.

This suit was instituted with the permission of the Collector for a declaration of the plaintiff's right to be the holder of a *desaigiri hak* against the defendant who was the purchaser at an auction sale in execution of a decree passed in a suit instituted by a mortgagee against the plaintiff, as the representative of the original mortgagor to enforce the mortgage debt by sale of the *hak*. Plaintiff urged that the proceedings in the suit by the mortgagee took place without the certificate of the Collector as required by S. 6 of Act XXIII of 1871 and therefore conferred no title on the defendant, and it was *held* that in the previous suit the Court had clearly no jurisdiction, as regards the subject matter, to entertain the suit, and the decree was therefore null and void and could not constitute the basis of any title in the purchaser or preclude the plaintiff from maintaining his right to the *hak* as a life-holder thereof. 9 B. 285. S

(f) *Malikana allowance:* 18 M. 187 = 17 A. 1 (P.C.). S-1

• *Malikana* is clearly money paid by Government within the meaning of S. 4 of the Pensions Act. 18 M. 187 (188). •

5.—“*Pension or grant of money*”—(Concluded).

Having regard to the language of S. 4 and the scheme of the Act suggested by Ss. 5 and 6, the narrower construction, *vis.*, that it is enough that the suit relate to *malikana*, appears to be the true construction. Possibly, the intention was that the distribution of what is regarded as the bounty of Government among the co-sharers should remain under its control or that of its executive officers. This view is the result of the grammatical interpretation of section confirmed by the scheme of the Act embodied in Ss. 5 and 6. It is also the view taken in 1 B. 75; 4 M. 341. and recently in 21 I.A. 148, by the Privy Council. 18 M. 187 (189). U

A suit for *malikana*, *i.e.*, a grant of a portion of the revenue in lieu of pre-existing proprietary rights, was, on the construction of Ss. 3 and 4 of this Act in the absence of a certificate under the Act, excluded from judicial cognizance. 17 A. 1 (P.C.) = 21 I.A. 148; 18 M. 187. Y

(9) *Instances not falling within the section.*

(a) A grant of lands free of revenue does not come within the purview of the Indian Pensions Act. 7 M. 191. W

(b) So also a grant of annuity as compensation for resumption of rent-free land. 8 C.W.N. 665. X

(c) Likewise inam lands. 21 M. 310. Y

(d) Similarly enfranchised inam land. 6 M.L.T. 132. Z

(e) So also *Matam* service inam. 5 M. 302. A

(f) Likewise *Kulkurni Vatan* grant. 18 B. 516. B

A suit for a declaration that the plaintiffs are *vatan*dars of a share of a moiety of a *kulkarni vatan* consisting exclusively of a cash allowance from Government, is not a suit relating to a “money grant” within the contemplation of this section. 18 B. 517. C

(10) *Suit for maintenance allowance by a widow.*

A suit for maintenance allowance by a widow, under an agreement by which her claim to a portion of a pension granted to her by Government and to other properties had been relinquished, is not a suit “relating to pension”, within the meaning of this section, and, hence, the rule as to the Collector’s certificate is not applicable to it. 30 M. 266 = 2 M.L.T. 186 = 17 M.L.J. 139. D

6.—“*Land Revenue.*”(1) “*Grant of money or land revenue*” suit as to—Jurisdiction of Civil Courts.

(a) Under S. 4 of the Act, the Civil Courts are prohibited from entertaining any suit relating to any grant of money conferred by the British Government whatever may have been the consideration for it, and whatever may have been the nature of the payment, claim, or right, for which such grant may have been substituted. 5 B. 408 (P.C.); 77 P.R. 1891. E

(b) In the case of *toda-giras-haks*, there is a grant of money by the Government, and a right for which it was substituted. It, therefore, falls within the language of this section. (*Ibid.*) [R. 4 B. 432; 4 M. 341; 16 B. 537; 17 A. 1; 22 B. 496; 29 B. 480; 31 M. 124] F

6.—“*Land Revenue*”—(Continued).

- (c) A suit relating to a grant of land revenue conferred by the old Maratha Government falls within the prohibition in Ss. 3 and 4 of this Act. Consequently, a suit in a Civil Court by a hereditary *deshmukh*, for the percentage on the cash or grain revenue, is prohibited by the said Pensions Act of 1871. G

The *haks*, relating to the grant, in whosoever hand they may be, continue to retain their original character (whether or not the service to be rendered for them as *sirpatil* has been dispensed with) sufficiently to bring them within the sections of the said enactment. The circumstances of their being levied in the form of grain directly from the villagers, cannot efface the fact that they originated in a grant from the ancient Native Government, and are still payable in virtue of that creation. 6 B. 209. H

- (d) A right to hold lands is always within the cognizance of the Civil Courts, and the mere fact that the holding is claimed to be exempt from the payment of land revenue cannot change the suit in connection with it, into one relating to a grant of money or land revenue, so as to fall within the prohibition in the Pensions Act of 1871. The proviso to S. 4 of the Bombay Revenue Jurisdiction Act contains no exceptions in respect of holdings unaccompanied by proprietary right in the soil, and there is no saving clause which would suggest that such a claim to such a holding might fall within the purview of the Pensions Act. 29 B. 480=7 Bom. L.R. 497. I

- (2) **Ss. 1, 4—Property forming “grant of land-revenue”—Attachment under money-decree, not a suit prior to the Act for purposes of S. 1.**

The property sought to be proceeded against by the plaintiffs in this case for the satisfaction of their decree was in the nature of a grant of land-revenue, and the suit was, therefore, to be treated as barred by this section, unless the plaintiffs could claim the benefit of the reservation contained in S. 1 of the Act. In this case, the plaintiffs had previously brought about merely the attachment of the property in question under a money-decree held by them, and such attachment could not be treated as a suit in respect of such property instituted before the date of the Act, for the purposes of S. 1 of the Act. If there had been a previous suit by a mortgagee to enforce his claim against the pension or grant of land-revenue, and a decree had been obtained directing payment out of such pension or grant, a refusal to execute such decree would directly have affected “a suit in respect of a pension or grant of land-revenue,” within the meaning of S. 1 of the Act. 6 B. 737. J

- (3) **Grant of villages enabling grantee to receive the land revenue.**

In a suit to recover a moiety of two villages granted as a *agir*: *Held*, that as the original grant was not of the freehold or full ownership in the soil, the suit was barred by this section. 12 M. 98. K

- (4) **Money grant on resumption of *Jaghire*.**

Where a *jaghire* granted by the Nawab of the Carnatic for the support of the grantee and his relatives, was resumed by Government, and a money payment, equivalent to the rent, substituted: *Held*, that suit by a relative of the original grantee to recover, as arrears of his share, money received by the representative of the grantee was barred by this section. 4 M. 341. L

6.—“*Land Revenue*”—(Continued).(5) *Suit for share of rent on a Jagir.*

(a) A—, being a suit relating to grant of land-revenue, is not cognisable by the Civil Courts, under Act XXIII of 1871. 36 P.R. 1874. M

(6) *Altumgah grant and istumrari property.*

—are grants of land-revenue and are, therefore, exempt from the jurisdiction of the Civil Courts, under Act XXIII of 1871. 1 P.R. 1876. N

(7) *Inam lands and mokasa amals.*

A suit against Government to recover possession of the *inam* lands, together with arrears of the *amals* was not cognizable by the Civil Courts both under the Pensions Act, S. 4, and under the Bombay Revenue Jurisdiction Act (X of 1876), S. 4. O

Both these Acts though not retrospective in their operation, still do not create rights to relief against the Government where none subsisted before. 11 B. 222. P

(8) *Abkari revenue under grant from Peshwa.*

The Peshwa's government granted in *inam* to the plaintiff's ancestor, by *sanad*, the villages of Golap and Randpar. The *sanad* granted “water, trees, grass, wood, quarries, mines, buried treasure, present and future cesses, and taxes and assessments.” The plaintiff brought the present suit to recover from the defendant a part of the Abkari revenue for 1884-85 and 1885-86. He contended that the revenue derived by the Government for tapping trees in the villages aforesaid was a tax within the contemplation of the grant.

Held, that the Court had no jurisdiction to entertain the suit, under this Act. The tax in question was a money tax, and as soon as it was imposed, the grant, if it entitled the *inamdar* to the tax, operated as a grant of the money to be derived from the tax, and was, therefore, within the spirit, if not the letter, of the Pensions Act, the object of which was to reserve to the Government the determination of all questions affecting grants of money the bestowal of which was an act of grace or State policy on the part of the ruling power. 14 Bom. 573. Q

(9) *Suit by recorded mafidar of one field for produce of another field.*

(a) A—is excluded from the cognisance of the Civil Courts by this section. 11 P.R. 1887. R

(b) The mere fact that the sum remitted or granted as a *munafi* is unascertained, because the land had never been assessed to land revenue, does not make such sum any the less “a grant of land revenue,” or *ipso facto* take the case outside this section. 25 P.R. 1900. S

(c) Where, therefore, a suit included a claim to a certain *munafi*, *held*, that the Civil Courts had no jurisdiction to entertain the suit *pro tanto* without the certificate required by S. 6 of the Act, and none the less so, merely because the land in question had never been assessed to land revenue. 25 P.R. 1900. T

(d) Where lands belonging to *mafidar* were swept away by a river and subsequently a small plot of land was reformed, a claim by *mafidar* to revive his rights over that plot was *held* not to be cognizable by the Civil Courts. 10 P.R. 1875. U

6.—“*Land Revenue*”—(Concluded).(10) **Zamindari granted as reward for services rendered to Government.**

- (a) Zamindari granted—not revenue free—by Government as a reward for services rendered is not a pension, and its alienation by the grantee is not prohibited either by this Act or by section 266, C.P.C., 1882. (4 B. 432; W.N. 1902, p. 161; 97 I.A. 181, R.); 26 A. 617=1 A.L.J. 338=A.W.N. (1904), 144. •Y

- (b) The same result follows, even when it is given in lieu of pension, 31 A. 382. W

(11) **Grant of land made to the family of a servant.**

- (a) A—, who died in the service of his master does not come within the Pensions Act. 23 W.R. 378. X

- (b) And a suit for a share of money payment made in substitution of the grant is not barred by this Act. 23 W.R. 378. Y

(12) **Pension—Definition—Grant of village upon payment of a quit rent—Construction of document.**

The common ancestor of the parties to a suit for partition of immoveable property had obtained one of the villages which were the subject of the suit by grant from the Maharaja Scindhia in 1861. In 1866 this grant had been confirmed by the British Government by means of a *sanad* which contained the following material provisions. There was a declaration that the village in question shall be continued by the British Government to the grantee and his heirs inclusive of all lands, allowances and rights belonging to others, so long as he and his heirs shall continue loyal to the British Government and shall pay Rs. 800 to Government as quit rent. The *sanad* further contained a guarantee against any further payment by the holder on account of Imperial Land Revenue beyond the amount specified, and a declaration that the village and its holder shall be liable for any local taxation which may be imposed in the district generally. Held that these provisions did not amount to a grant of Land Revenue and the grant did not therefore fall within the purview of this Act. A.W.N. (1905), 206=28 A. 104 (1 B. 523, R.). Z

7.—“*Former Government.*”(1) **Claim for maintenance by a female member—Government pension.**

- Where under a *karar*, the defendant, the person responsible to maintain the plaintiff, a Hindu woman, agreed to pay Rs. 100 *per mensem* until her death, the consideration being that the plaintiff gave up various claims, which she had in regard to the family property and also her claim to a portion of the pension granted by Government, a suit by the plaintiff for the recovery of such maintenance is not “relating to any pension” granted by Government within the meaning of S. 4 of the Act, as there was nothing in the *karar* to show that the maintenance is to be paid out of the pension allowance or was to depend upon it. 17 M.L.J. 139=2 M.L.T. 188=30 M. 266. (1 B. 75, 4 M. 341 and 18 M. 187, D.). A

(2) **Agreement by Government to pay from treasury.**

This section prohibits the Civil Courts from entertaining a suit against Government upon an alleged agreement by it to pay moneys from its treasury in lieu of *toda-giras-haks*. 4 B. 443 N. B

7.—“Former Government” —(Concluded).

A suit against Government, upon an alleged agreement by Government to pay moneys from its treasury in lieu of *toda-giras-haks*, falls within the prohibition, in this section, to Civil Courts to entertain any suit relating to any grant of money made by the British Government, whatever may have been the consideration for such grant, and whatever may have been the nature of the payment, claim, or right, for which such grant may have been substituted. 4 B. 437 (N)=8 I.A. 77=5 B. 408. C

(3) Suits relating to grants of Land Revenue—Pensions Act,

Suit relating to grant of Land revenue made by the British Government is outside the jurisdiction of Civil Courts. (See S. 4, Pensions Act of 1871). 77 P.R. 1891. D

5. 1 Any person having a claim relating to any such pension or grant

Claims to be made to Collector or other authorized officer.

may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the Local Government; and such Collector, Deputy Commissioner or other officer shall

dispose of such claim in accordance with such rules ² as the Chief Revenue Authority may, subject to the general control of the Local Government, from time to time, prescribe in this behalf. E

(Notes).

1.—“Section 5.”

(1) Scope of section.

This section prescribes a remedy, such as it is, for the claimant shut out from the Civil Court. 1 B. 75 (80). E

(2) Suit for share of rent on a *Jagir*.

A person claiming a share of the produce of *jagir* must apply, under S. 5 of Act XXIII of 1871 (Pensions Act), for an order declaring his share. He has then the right to sue in a Civil Court for the amount due thereon. 9 P.R. 1875. F

2.—“Such rules.”

I. BOMBAY.

(1) Authorising certain officers of the Salt Department to hear claims and grant certificates :—Notn. No. 4247, dated 22nd July. 1881, B.G.G., 1881, Pt. I, p. 397.

Under the provisions of Ss. 5 and 6 of the Pensions Act, 1871, His Excellency the Right Honourable the Governor in Council is pleased to authorise the Deputy and Assistant Collectors of Salt Revenue in charge of Ranges to hear and dispose of claims and grant certificates empowering a Civil Court to take cognizance of claims relating to grants of money payable on the part of Government in the Salt and Continental Customs Revenue Department, and under the provisions of S. 84 of the Bombay Hereditary Offices Act, 1874, His Excellency the Right Honourable the Governor in Council is pleased to confer on the Collector of Salt Revenue all such of the powers and duties of a Revenue Commissioner and on the aforesaid officers all such of the powers and duties of a Collector under that Act as are necessary for the lawful control of and are applicable to hereditary offices connected with the said Department. G

2.—“Such rules”—(Continued).

I. BOMBAY—(Continued).

(2) Noth. No. 6949, dated 23rd December, 1879, B. G. G., 1879, Pt. I, p. 1020.

In exercise of the powers conferred by Ss. 5, 8 and 14 of the Pensions Act, 1871, the Commissioners, Northern Division, Central Division, and Southern Division, have, with the approval of Government, framed the following rules in supersession of the rules under S. 14 of the said Act, published at p. 656 of the *Bombay Government Gazette* of 7th August, 1873, and of all other rules, and orders on the same subjects hitherto in force in any part of the Divisions of the said Commissioners :—

I—Under S. 5.

1. Claims relating to pensions or gratuities on account of service, whether in the civil, military, naval, or any other department of the administration, are to be inquired into and disposed of in such manner as may be directed in the Civil Pension Code, or in any rules or orders for the time being in force applicable to such pensions respectively.

2. Claims relating to any cash payment forming part of the property of a *watan* in respect of which no service commutation settlement has been effected, will be enquired into and disposed of in accordance with the provisions of the Bombay Hereditary Offices Act and of the rules and orders from time to time in force thereunder. In the event of any such claim being preferred to which none of the said provisions shall appear to be applicable, the orders of Government should be obtained through the proper channel previous to the disposal thereof.

3. Nothing in the rest of these rules applies to any pension, gratuity, or cash payment to which the two last rules apply.

4. Claims preferred to a Collector under S. 5 of the Act may be either :

- (a) Against Government only, or
- (b) against Government, and one or more private parties jointly, or
- (c) against private parties only.

Claims falling under class (a) or (b) shall ordinarily be disposed of by the Collector; but whenever any important legal question is involved, which the Revenue officers concerned may not feel themselves competent satisfactorily to deal with, the Collector may, with the previous sanction of the Commissioner, issue a certificate under S. 6 of the Act authorizing the Civil Court to try the case.

Claims falling under class (c) shall be disposed of by the Collector if the question at issue between the parties is not of a complicated or difficult nature; but if the claimant applies for a certificate under S. 6 of the Act, and sets forth satisfactory reasons for such application, or if the question at issue between the parties appears to be of a complicated or difficult nature, or if the claim is one which if awarded could only be enforced by a Civil Court, the Collector may issue a certificate under the said S. 6, authorising the Civil Court to try the case: provided that no certificate shall be issued for any case which could not be decided by the Civil Court in favour of one, or more of the parties thereto without making an order or decree such as it is prohibited from making by the said section.

2.—“Such rules”—(Concluded).

I. BOMBAY—(Concluded).

5. Except in the cases provided for in the last paragraph of r. 7, no claim by which the liability of Government to pay any pension or grant is affected directly or indirectly shall be disposed of by a Collector without first obtaining the sanction of the Commissioner of the Division to the order which he proposes to pass.

Previous sanction of Commissioner when necessary to final order of disposal.

6. Any claim preferred to a Collector under S. 5 of the Act, may be referred by him for inquiry to any Assistant or Deputy Collector or other officer subordinate to him, and every Assistant or Deputy Collector in charge of talukas may receive claims on behalf of the Collector and forward the same with his opinion after inquiry to the Collector; but every order for disposing of a claim or for granting a certificate under S. 6 that a case against Government only or against Government and one or more private persons jointly may be tried, shall be made with the previous sanction of the Commissioner by the Collector himself.

Reference of claims for inquiry to subordinate officers.

(Note).

The words “that a case.....tried” were inserted after the words and figure “a certificate under Section. 6,” by Notn. No. 1980, dated 18th March, 1891, B. G. G. 1891, Pt. I, p. 253.

Law, &c., to be observed in disposal of claims.

7. Claims relating to pensions or grants are to be disposed of in accordance with :

- (a) The law, if any, for the time being in force applicable to such claims.
- (b) The terms and conditions of the *sanaad* or other document, if any, under which such pensions or grants are enjoyed.
- (c) The rules or orders of Government for the time being in force, if applicable to such claims.

But if any claim is brought, the subject-matter of which has been already inquired into and disposed of by competent authority, the Collector will merely record the fact of such previous decision, and dispose of the claim accordingly.

[For the rest, See Ss. 8 and 14, *infra*.]

II. UNITED PROVINCES OF AGRA AND OUDH.

Notifications.

For—prescribing such rules under the powers conferred by the section, see N.W.P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 42.

6. ¹ A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer ² authorized ³ in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

Civil Court empowered to take cognizance of such claims.

(Notes).

1.—“Section 6.”

(1) Scope of the section.

This section enables revenue officer who may be puzzled by the duty which S. 5, *supra*, casts on him, to refer the parties to a Civil Court for the determination of their respective interests in the income or other benefit which the executive will still, as against either or both of the litigants, be at liberty to allow or to withhold. 1 B. 75 (80). L

(2) Ss. 6 and 14—Certificate.

Where plaintiff sued to establish that defendant 1, K, had no share in a *Todagiras-hak* and for an injunction to restrain defendant 2, the Talukdari Settlement Officer, from crediting K with a share, the Assistant Judge rejected the claim on the ground that the Collector, under S. 14 of Act XXIII of 1871, could only grant a certificate in the case of claims against Government and one or more private persons jointly with the previous sanction of the Commissioner and that sanction had not been obtained before granting the certificate.

Held, that the rule had no application as the suit was not against Government but between private persons, and the certificate given by the Collector was sufficient. P.J. 1892, p. 350. M

2.—“Certificate....or other officer.”

(1) Certificate—Form.

There is nothing in Act XXIII of 1871 which requires the certificate of the Collector to be in any particular form. P.J. 1893, p. 352. N

(1-a) Pensions Act, Ss. 3, 4—*Malikana* dues payable by Government, suit relating to—Certificate under the Act necessary.

On the question which arose in this case as to whether, so far as regards one of the villages in which the plaintiff and defendant had formally made over to Government their proprietary rights on consideration of receiving annual *malikana* from Government in perpetuity, the jurisdiction of the Court was not taken away by this Act, it was *held* that the provisions of the Pensions Act, incapacitating Civil Courts from entertaining suit thereunder applies in cases of grants made in consideration of prior rights vested in the grantee. The plaintiff might have applied and obtained a certificate under the Act, which would have enabled the Court to make some declaration of right as between her and the defendant, but she did not do so, and must therefore submit to the disability imposed upon the Courts by the Act. 17 A. 1 = 21 I.A. 148 (P. C.), 18 M. 187. O

(2) Mortgage of right—Suit for foreclosure—Certificate of Collector not forthcoming—Procedure.

Where therefore a right to receive land revenue was included along with other property in a mortgage, upon which a suit for foreclosure was brought, it was *held* that as regards the right to receive land revenue the suit would not lie in the absence of the certificate required by this section and, time having been granted for the production of the necessary certificate, which was not produced, the dismissal of the suit *quoad hoc* was sustained. A.W.N. 1902, p. 187 = 25 A. 78 (17 B. 169, F.) P

2.—“Certificate....or other Officer”—(Continued).

(8) Suit for cash allowance payable by *inamdar*.

A suit by the manager of a shrine to recover from the *inamdar* of a village a cash allowance due to the shrine and charged upon the village lands could only be instituted on production of certificate under S. 4 of the Pensions Act. 16 B. 537. Q

(4) Certificate from Collector—Suit based on agreement to receive maintenance out of cash allowance—Suit relating to a pension or grant of money.

(a) Under an agreement between the plaintiff and the defendants, the former was entitled to an annual payment of Rs. 52 for her maintenance, out of a cash allowance, which was received by the defendants from Government. She brought this suit to enforce her right under the agreement; but did not produce the certificate from the Collector required by S. 4, *supra*. Held, that the certificate was necessary. The words of the section are wide enough to include any suit to enforce such a claim; and provided it relates to a pension or grant of money or of land revenue, it is immaterial whether the claim is based on an agreement between the parties, or arises out of any other legal right or liability, and whether it is a claim for a share by way of partition or maintenance or otherwise. 9 Bom. L.R. 839=31 B. 512. But see, also, 30 M. 266=2 M.L.T. 188=17 M.L.J. 139. R

(b) But it is otherwise where there is nothing to show that the maintenance is to be paid out of the pension allowance or was to depend upon it. 17 M.L.J. 139=2 M.L.T. 188=30 M. 266. S

(5) Substitution of money payment for *jaghir*—Pensions Act.

Where the Government resumed a *jaghir* and substituted a money payment, a suit by a descendant of the original grantee for his share of the amount is barred, under this Act, unless the plaintiff has got a certificate from the proper officer. 4 M. 341. T

(6) Pension granted in resumption of *saranjam*.

The provisions of the Pensions Act will prevent a Civil Court from declaring a pension granted in resumption of *saranjam* to be partible, unless the Collector should authorize it to do so. 2 B. 346. U

(7) Claim to share in right to collect *masi* dues—Pensions Act.

It is not competent to the Civil Court to declare defendants to be entitled to a share in the right to collect *masi* dues which the Government had bestowed upon another, unless they produce a certificate entitling them to sue in the Civil Court. 160 P.R. 1884. V

(8) Suit for *malikana* payable by Government.

Where a *malikana* was granted in perpetuity to a certain person in consideration of the transfer of a village to the Government, it was held that a suit for such *malikana* cannot be entertained in the absence of a certificate under the Pensions Act. 17 A. 1 (P.C.)=21 J.A. 148. W

(9) Suit against *sirdar*.

A—brought in the Court of the Agent for *Sirdars* in the Deccan requires a Collector's certificate. 17 B. 224. X

2.—“Certificate . . . or other Officer”—(Continued).

(10) Grant of a share of *jagir* by Government.

The Civil Courts are not competent to decide whether the grant of a share of a *jagir* by the Government is valid, at least until the matter has been referred to them by a certificate duly issued, under this Section. 12 P.R. 1886 (Rev.). Y

(11) *Jagir*—Succession—Grant of Government revenue for life to parties' family in specific shares—Death of one sharer—Suit by the surviving sharer against the son of the deceased for certain instalments wrongfully enjoyed by the latter—Construction of such grant.

See 108 P.R. 1901 (157 P.R. 1899, cited). Z

(12) Suit regarding *Toda-giras-haks*.

Toda-giras-haks come within the definition of “grant of money or land revenue” in Act XXIII of 1871 (Pensions) and therefore a suit in respect of them can be maintained only on production of certificate as required by that Act. 1 B. 203; 4 B. 437; 4 B. 443; 5 B. 408 (P.C.). A

Allowances in respect of *Toda-giras-haks* are within the scope of S. 4 of the Pensions Act, XXIII of 1871; and, hence, a suit for enforcing payment of such allowances by the Government is not cognizable by a Civil Court without the Collector's certificate under S. 6 of the Act. 5 B. 403. B

(13) Pensions Act (XXIII of 1871) Ss. 4, 5, 6—Collector's certificate—Jurisdiction of Civil Courts.

S. 4 requires as a condition precedent, a certificate from the Collector or other authorized revenue officer under S. 6, for a Civil Court to have jurisdiction in suits relating to pensions, money grants, or land revenue, conferred by Government, independently of whether Government be a party to such suits or not. 1 B. 75. C

A suit for the recovery of a sum of money payable to the plaintiff on account of his share of *malikana*, which was clearly money paid by Government within the meaning of S. 4 of the Pensions Act, cannot be instituted without a certificate under S. 6 of the Act, although the Government was not the party sued against. 18 M. 187. D

(14) Collector's certificate not obtained when suit was filed—Effect.

(a) A suit requiring Collector's certificate under the Pensions Act is not void *ab initio* by reason of its having been filed without a certificate. 17 B. 169 (172); 8 C. 422 (P.C.). E

(b) The Court is only precluded from taking cognisance of it until the certificate is produced. 17 B. 169 (172); 9 I.A. p. 20. F

(c) It is enough if the requisite sanction be obtained before decree. 17 B. 169; 17 P.R. 1882. G

(d) Such a certificate was admitted in appeal and the case was remanded for fresh trial. 17 B. 169. H

(14-a) Appeal—Pensions Act.

Certificate under the Pensions Act allowed to be produced on second appeal and decree reversed and case remanded for a trial on the merits when plaintiff had succeeded in the Court of first instance; where the objection for want of certificate was not taken. P.J. 1891, p. 276. I

2. — "**Certificate . . . or other Officer**" — (Continued).

- (15) **Certificate—Collector's order referring the parties to Civil Court—Certificate produced in the Court of Appeal—*Sanad*—Construction—Grant of the soil of a village.**

Where the Subordinate Judge decreed partition of a village holding that, though it came within S. 6 of the Pensions Act, the want of a certificate was sufficiently met by an order of the Collector referring the parties to Civil Court to determine whether the said village was partible, and the High Court on appeal confirmed that decree holding that the *Sanad*, by which the British Government confirmed the land, was not a grant of land revenue but of the soil of the village itself, the Judicial Committee affirmed that conclusion as to a question of construction, particularly as it seemed to them that the Subordinate Judge was fully justified in treating the said order of the Collector as dispensing with the said certificate. 11 C.L.J. 281 = 32 A 148 (P.C.) = 7 A.L.J. 165 = 12 Bom. L.R. 267 = 11 C.L.J. 281 = 14 C.W.N. 10 = 20 M.L.J. 146 = 7 M.L.T. 53. J

The Judicial Committee approved of the procedure adopted by the High Court in allowing the plaintiff to procure and file a certificate under this section, pending appeal from the decree of the lower Court, which treated the order of the Collector referring the parties to Civil Court for determination whether certain villages were partible, as equivalent to a certificate under the said section. (*Ibid.*) K

- (16) **Ss. 4 and 6—Omission to obtain previously to suit, certificate enabling Court to entertain suit—Effect of certificate granted after the hearing.**

Part of the property in suit consisted of land, which was assumed in the Courts below to be held on terms bringing it within the Pensions Act, 1871. After the judgment, which disposed of the principal questions in the case, been given, final judgment was suspended upon an objection that no certificate had been obtained under that Act. The certificate having been then obtained and delivered to the Court,—*held*, that the original defect did not prevent the suit proceeding. 8 Cal. 422. L

- (17) **Certificate not obtained when suit filed—Certificate not produced at hearing—Procedure—Practice.**

Where at the hearing of such a suit the necessary certificate was not produced, *held* that the Judge ought to have granted the plaintiff's application for an adjournment, in order that the certificate might be obtained and produced. 17 Bom. 169. M

- (18) **Certificate—Presumption—Revocation.**

The presumption is that a certificate granted by the Collector under S. 6 of the Act was granted by him with the previous sanction of the Commissioner. The Commissioner has no power to cancel the certificate granted by the Collector, to revise the Collector's action or to cancel the certificate. 23 B. 676. N

- (18-a) **Subsequent cancellation of Collector's certificate—Effect.**

The subsequent cancellation of a Collector's certificate under the Pensions Act does not render invalid a decree of a Civil Court passed in consequence of the grant of the certificate. P.J. 1892, p. 200. O

- (19) **Decree obtained without Collector's certificate.**

A—is void. 9 B. 235; see, also, 9 B. 196. P

2.—“Certificate....or other Officer”—(Continued).

(20) Collector—Certificate—Civil Court—Suit to recover share of allowance for particular years—Certificate referring only to some years.

A certificate granted by the Collector under the Pensions Act authorised the plaintiff to recover his share in the allowance for the years 1889—90 to 1896—97. On the strength of this certificate, the plaintiff brought a suit to recover his share of the allowance for the years covered by the certificate and also for the year 1897—98. The lower appellate Court disallowed the plaintiff's claim so far as it related to the year 1897—98, on the ground that that year was mentioned in the certificate; *held*, that the certificate given by the Collector might refer only to the plaintiff's share in the allowance for particular years, but if the Collector permitted the plaintiff to establish his right to a share in the Civil Court, the plaintiff was not bound under the Pensions Act to get a certificate for each year's allowance before suing for it. The general right to each year's share follows as consequent on it. 28 B. 241. Q

(20-a) Omission in certificate—Effect.

The fact that the name of one of the parties who was a major at the date of the suit, but was a minor when the certificate was given, is not mentioned in the certificate which contained the name of his mother, does not necessitate a fresh certificate being given. P.J. 1893, p. 352. R

(21) Collector's certificate not necessary.

(a) The Collector's certificate is not necessary to maintain a suit by an inamdar against a khot for balance of land revenue. 18 B. 525. S

(b) A grant of lands free of revenue does not come within the scope of the Pensions Act, which contemplates only money payments to be received through the Collector or recovered from persons bound to pay revenue; and hence the Collector's certificate is not essential for a Civil Court to have jurisdiction in a suit on it. 7 M. 191. T

(c) It is not necessary for a mortgagee of an inam village suing for its sale, or in the alternative, for its possession, to produce a certificate under the Pensions Act. There is no suggestion of the mere share in land revenue being mortgaged. P.J. 1896, p. 161. U

(d) (i) A suit relating to inam land granted before the time of the British Government does not fall within the provisions of the Pensions Act. 21 M. 310. Y

(ii) Hence, a certificate of the Collector under the Act is not necessary. (*Ibid.*)

(e) (i) A suit relating to the management of *saranjam land* is not included in the Pensions Act. 16 B. 596 (599). W

(ii) Hence, no certificate of the Collector is required to maintain such suit. (*Ibid.*) W-1

(f) The Pensions Act must be construed strictly; and a suit by the assignees from Government of land revenue, to recover arrears from persons admittedly liable to pay revenue to somebody, though not to the plaintiff, was *held* to be one under S. 9, and not barred under Ss. 4 and 6 for want of a certificate from the Collector. 10 A. 396 (1 B. 75, D. P., 6 Bomp. L.R. 423). X

2.—“Certificate....or other Officer”—(Concluded).

(22) Kazi—Kazi's office—Rozina allowance—Its liability to attachment and sale in execution of a decree.

Plaintiff obtained a money decree against Hafasji and in execution sought to attach and sell a decree obtained by Hafasji against Mohiyodin which entitled Hafasji to receive annually a certain portion of the Rozina allowance paid by Government to Mohiyodin as Kazi. Hafasji contended that the Rozina allowance was paid to Mohiyodin and his family for service as Kazi, and that, therefore, it was not liable to the process of a Civil Court under S. 13 of Bombay Act, III of 1874. This contention was upheld by both the lower Courts.

Held, that as the decree sought to be attached was passed before the Pensions Act, XXIII of 1871 came into force, plaintiff's demand was not barred for want of a certificate under S. 4 of the Act, P.J. 1894, p. 44, 19 B. 250. Y

2.—“Authorised.”

BOMBAY NOTIFICATIONS.

For—authorising officers under the powers conferred by this section and prescribing rules in Bombay. See Bombay rules and orders, Sep, also, notes under S. 5, *supra*. Z

Pensions for lands
hold under grants in
perpetuity.

7. Nothing in sections 4 and 6 applies to—

(1) any inam of the class referred to in section 1 of Madras Act, No. IV of 1862¹;

(2) pensions heretofore granted by Government in the territories respectively subject to the Lieutenant Governors of Bengal and the North-Western Provinces, either wholly or in part as an indemnity for loss sustained by the resumption by a Native Government of lands held under sanads purporting to confer a right in perpetuity. Such pensions shall not be liable to resumption on the death of the recipient, but every such pension shall be capable of alienation and descent², and may be sued for and recovered in the same manner as any other property.

(Notes).

1.—“Any inam....Madras Act, No. IV of 1862.”

N.B.—*I.e.*, “inams of the classes described in cl. 1, S. 2, (Mad) Reg. IV of 1831, which have been or shall be, enfranchised by the inam-commissioner and converted into free-holds in perpetuity, or into absolute freeholds in perpetuity.” The classes so prescribed are “hereditary” or personal grants of money or of land-revenue, however denominated, conferred by the authority of the Governor in Council (or which having been made by any Native Government, have been confirmed or continued by the British Government—Act XXXI of 1836) in consideration of services rendered to the state, or in lieu of resumed offices or privileges, or of Zamindaries or Paleiyams forfeited or held under attachment or management by the officers of Government, or as a Yaumja or charitable allowance, or as a pension. A

2.—Alienation and descent "

Alienability of a pension under—Gift of right to pension.

In respect of a deed of gift executed by a Muhammadan, in favour of the wife, conveying to her the right to a pension drawn by him, which was one of the description contemplated by S. 7 of the Pensions Act (XXIII of 1871), it was *held* that, by that section which enacts the law for the Muhammadans as well as the Hindus, it was provided that "every such pension was capable of alienation and descent," that, therefore, whatever the Muhammadan Law may be apart from the Pensions Act, under the above section, the pension, or any interest in it, was capable of being alienated by its holder by way of gift. 9 A. 213 = 7 A.W.N. 22. **B**

III.—Mode of Payment.

8. All pensions or grants by Government of money or land-revenue shall be paid by the Collector or the Deputy Commissioner or other authorized officer, subject to such rules ¹ as may, from time to time, be prescribed by the Chief Controlling Revenue authority.

Payment to be made by Collector or other authorised officer.

(Notes).

1.—"Rules."

BOMBAY.

Notification No. 6849, dated 23rd December, 1879, B. G. G. 1879, Pt. I, p. 1020.

I. Under S. 5.

For Rules, 1—7, see, S. 5, *supra*.

B-1

II. Under S. 8.

8. All payments of pensions or grants are usually to be made in one lump sum for the year commencing on the 1st May and ending 30th April, but applications for their payment by monthly or quarterly instalments may be considered and disposed of by the Collectors.

Payments to be made for the year commencing 1st May, but may be made in instalments.

(Note).

The words "subject to the sanction of the Commissioner," at the end of this rule have been omitted by Notn. No. 1980, dated 18th March, B.G.G., 1891, Pt. I, p. 253. **B-2**

9. Pensions and grants, for the payment of which application is duly made at the proper period, will be paid in full, except in the case of payment being suspended, pending the orders of a Civil Court or pending inquiries by Government or by any officer of Government. But if, owing to non-application or other neglect on the part of the claimants, such payments fall into arrear, the pensions or grants will be paid as follows :—

Payments of arrears.

For the current year in full.

First year's arrears in full.

Second year's arrears subject to a deduction of 10 per cent.

Third do. do. 20 do.

Fourth do. do. 30 do.

Fifth do. do. 40 do.

Provided that no deduction shall be made under this Rule from arrears of payments due (1) on account of village *devasthan* allowances not exceeding Rs. 5 per annum in amount or (2), under compensation bonds.

I.—“Rules”—(Concluded).

The “current year” means the year within which payment is properly due under r. 14.

Payment of arrears due to deceased persons. 10. Subject to the provisions of r. 9, Collectors may authorize the payment of arrears due to a deceased person after such investigation as shall satisfy them :

(a) of the actual date of such person's death, and

(b) that the applicant is entitled as such person's legal heir, or otherwise, to receive payment.

Pensions or grant not drawn for six years to lapse.

11. Any pension or grant for payment of which no application is duly made for more than six years, or in the case of Hardas Gosavis' allowance, two years is to be struck off the books, and all arrears forfeited.

(Note).

The words “Or.....two years” after the word “Years” in this rule were inserted by Notn. No. 623, dated 24th January, 1893, B.G.G. 1893, Pt. I, p. 83.

B-3

But in certain cases may be re-admitted.

But if the pension or grant is held under a permanent or hereditary title, it may be re-admitted without payment of arrears if a claim thereto is duly preferred under S. 5 of the Act within twelve years from the date of the last payment.

Date of applications for arrears to be noted.

12. The date on which application for payment was made must be noted by the disbursing officer on all bills for arrears.

[For the rest of the rules, see S. 14, *infra*.]

C

9. Nothing in Sections 4 and 8 shall affect the right of a grantee of land-revenue, whose claim to such grant is admitted by Government, to recover such revenue from the persons liable to pay the same under any law for the time being in force for the recovery of the rent of land.

Saving of rights of grantees of land-revenue.

(Notes).

I.—“Nothing....admitted.”

Ss. 4, 6, 9—Grant of land revenue—Suit for arrears by assignees of Government—Right of plaintiff admitted by Government—Collector's certificate not essential.

Where the assignee of land-revenue by Government sued the tenants for arrears of revenue, and the Government admitted the right of the assignees, and the tenants also admitted their liability to pay the arrears to somebody, though not to the plaintiff, *held*, that the suit was governed by S. 9 of the Act, and that the want of the Collector's certificate as required by Ss. 4 and 6 did not bar the suit. 1 B. 75, D.=10 A. 396=8 A.W.N., 72.

D

In a suit by the *Inamdar* to recover assessment from *khatedar* for lands standing in his *khata*, where the Government has admitted the plaintiff's right, no certificate is required by virtue of S. 9 of the Pensions Act, for the maintenance of the suit. 6 Bom. L.R. 423 (427).

E

10. The Local Government may, with the consent of the holder, order the whole or any part of his pension or grant of money or land revenue to be commuted for a lump sum on such terms as may seem fit.

Commutation of pensions.

IV.—Miscellaneous.

Exemption of pension from attachment³.

11. No pension¹ granted or continued by Government on political considerations², or on account of past services or present infirmities or as a compassionate allowance,

and no money due or to become due on account of any such pension or allowance,

shall be liable to seizure, attachment or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

(Notes).

1.—“Pension.”

(1) Pension—Scope—Meaning.

(a) The term “pension” is not defined in the Pensions Act, nor, in any other Act. 4 B. 432 (436); 30 M. 153 (154)=2 M.L.T. 33. **F**

(b) Giving the word its widest etymological sense, it might be construed as including all payments of every kind and description. 4 B. 432 (436). **G**

(c) But that it must have some much more narrow signification than this, is clear from the circumstance that in the Pensions Act the word is used with, but distinguished from, grants of money or land revenue, and must, therefore, be supposed to denote money payable otherwise than in respect of a right, privilege, perquisite, or office. 4 B. 432 (436). **H**

(d) The word “pension” in this section, is used in its ordinary and well-known sense, namely that of a periodical allowance or stipend granted, not in respect of any right, privilege, perquisite or office, but on account of past services, or particular merits, or as compensation to the dethroned princes, their families and dependants. 2 Ind. Cas. 100=31 A. 382=6 A.L.J. 519=5 M.L.T. 388=4 B. 432 (436). **I**

(e) A grant of an annual sum made by Government as a compensation for loss sustained by the grantee on account of improper resumption by Government of rent-free lands formerly belonging to the grantee is not pension within the meaning of this section and is liable to attachment. (4 B. 432, F.); 8 C.W.N. 665. **J**

(f) The section itself indicates what a pension really is, namely, it is grant made by Government on political considerations or on account of past services or present infirmities or as a compassionate allowance. 8 C.W.N. 665 (666). **K**

(g) The word “pension” in this section and S. 266, clause (g) of the Code of Civil Procedure imply periodical payments of money by the Government to the pensioner in the manner prescribed by S. 3 of the Act. 26 A. 617=1 A.L.J. 338. **L**

1—"Pension"—(Concluded).

(h) The words "pension or grant of money or land revenue" are used in the preamble and in sections 4, 5, 8, 10 and 14 (8) of the Act. 30 M. 153 (154) = 2 M.L.T. 33.

While Ss. 11, 12, 13 and 14 (1) to (7) mention pensions only. 30 M. 153 (154) = 2 M.L.T. 33. M

(i) The pensions referred to in S. 11 are periodical allowances granted, by Government "on political considerations or on account of past services or present infirmities, or as a compassionate allowance" as distinguished from payments by Government "in respect of any right, privilege, perquisite or office" which fall within the definition of "grant of money or land revenue" in S. 8. (4 B. 432; 5 M. 272; 26 A. 617; 8 C.W.N. 665, F.); 30 M. 153 (155). N

(2) Certain grants—Their nature.

(a) A grant, by a *sanad* from Government, of 'proprietary rights in certain villages, subject to the payment of land revenue, and expressed to have been made in consideration of good service rendered to Government, cannot be considered to be a 'political pension' within the meaning of S. 266, cl. (g), of the O.P.C. nor a 'pension' within the meaning of S. 11 of the Pensions Act, XXIII of 1871. 26 A. 617 = A.W.N. (1904), 144 = 1 A.L.J. 338. O

(b) A grant stated to have been made by way of compensation for loss sustained on the abolition of a certain office held hereditarily in the grantor's family, is a grant falling within S. 3, but not within Ss. 11 and 12 of the Pensions Act (XXIII of 1871). (4 B. 432, F.); 30 M. 153 = 2 M.L.T. 33. P

(3) *Toda-giras hak*—Its nature.

(a) *Toda-giras haks* are annual payments paid by the village communities to the *girasias*. These are recognised as a species of property, though their origin was unlawful. 5 B. 408 (419) (F.C.). Q

(b) From the circumstance that, in the Pensions Act, the word 'pension' is used with, but as distinguished from, grants of money or land revenue, it should be taken as denoting money payable otherwise than in respect of a right, privilege, perquisite, or office; and *Toda-giras haks* though falling under the term 'grant of money or land revenue' are not included in the word 'pension.' 4 B. 432. R

(4) *Jagir* income.

The *jagir* income is a pension within the meaning of S. 11 of the Pensions Act, 1871. 95 P.R. 1906, 341. S

2.—"On political Consideration."

(1) Ss. 6, 8, 11—*Toda-giras hak*—The Hak entered in the name of a person—Arrears of the Hak falling due in the person's life-time—Application to receive payment of the arrears by the persons' heirs after his death—Collector—Certificate.

In execution of a decree which made the *Toda Giras* allowance payable to him, the decree-holder applied to have his name entered in the Collector's book as the person entitled to receive the payments and to recover the arrears due. The name was accordingly entered under the Pensions Act and the arrears paid. The decree-holder having died, his heir filed a dakhast to recover further arrears that had become due in the life time of the decree-holder. The Court overruled the Collector's

2.—“On political Consideration”—(Concluded).

objection that the darkhast could not lie in the absence of a certificate under the Pensions Act, and directed payment of the arrears into Court:—

Held (1) that the powers of the Collector under the rules framed under the Pensions Act had been exhausted, and there was no discretion left for that officer to exercise either under the Act or the rules, so far as applicant's right to receive the allowance which had accrued due in the life-time of the last holder was concerned.

(2) That, if the amounts remained unpaid, the Collector held them for and on the decree-holder's behalf as moneys due to him. They were, therefore, recoverable on his death by his heirs, independent of any question arising under the Pensions Act or the rules under it. 11 Bom. L.R. 1869. T

(2) *Saranjam*—Resumption—Pension, its impartibility—Hindu Law—Adult son's right to demand maintenance from his father.

A *saranjam* is ordinarily impartible, and *semble* that a political pension granted in substitution of a resumed *saranjam* is so likewise. 2 Bom. 346. U

The Pensions Act (XXIII of 1871) prevents a Civil Court from declaring such a pension to be partible, unless the Collector should authorize it to do so; and the fact that the Collector authorizes a suit for maintenance out of such pension, affords no ground for presuming that he authorizes a suit for the partition of the pension. (*Ibid.*) Y

(3) Political pension payable in India but granted by Ceylon Government.

Certain descendants of the family which formerly reigned in Ceylon, resided in British India, where the Collector of the district, on behalf of the Government of India, paid them pensions. Apparently, though this was not proved, the cost of these pensions was ultimately defrayed by the Government of Ceylon. These pensions were attached in execution of certain decrees. Upon application being made by the pensioners to have the attachments set aside:—

Held, that the pensions were exempt from attachment as being “political pensions” within the meaning of S. 266 (g). 26 M. 423. W

Per White, C.J.—If the Government of India is to be regarded as merely the Agent of the Ceylon Government for the purpose of paying these pensions, I do not think the Courts of this country would have any jurisdiction to proceed by way of attachment since the rights of the pensioners (assuming them to be enforceable at law) would only be enforceable in Ceylon. (5 B. 249; 18 C. 216, R.). 26 M. 426. X

3.—“Exemptions from attachment.”

N.B.—See too S. 60, cl. (g), C.P.C., 1908.

(1) Certain stipends, etc., not liable to attachment.

Calcutta, the 1st January 1909.

Supreme Government Notification.

No. 1.—In pursuance of S. 60, sub-S. (1), cl. (g), of the Code of Civil Procedure, 1908 (Act V of 1906), the Governor-General in Council is pleased to declare that the stipends and gratuities payable by the undermentioned Family Pension Funds shall not be liable to attachment or sale in execution of a decree of a court of law:—

3.—“Exemptions from attachment” —(Continued).

- (1) The Bombay Unconvenanted Service Family Pension Fund.
- (2) The Bengal Unconvenanted Service Family Pension Fund.
- (3) The Bengal and Madras Service Family Pension Fund. Y

(1-a) Pension—Land revenue granted by Government on Political considerations—Water-advantage rate—Liability to attachment in execution of a decree—Decree, construction of.

A decree for money directed “that the defendant do pay” Rs. 6,869-10 to the plaintiff by half yearly instalments “of Rs. 500 out of the *khush haisiyati* (water-advantage rate) income which accrues to him each harvest. The instalment for each harvest will be paid in the months “of March and September when the defendant realises his *khush haisiyati* income until the payment of this decree money.” On default having been made the decree-holder applied for the attachment of the income in question. Held, that the *khush haisiyati* (Water-advantage rate) was a part of the jagir, granted on political considerations and was therefore exempt from attachment by virtue of the provisions of this section. 96 R.R. 1906, 344. Z

(2) Death of political pensioner—Pension remained unpaid—Effect.

On the death of a Political pensioner, a sum of money due to him as pension remained unpaid in the hands of the Collector. Held that the same was not liable to attachment so long as it remained in the hands of the Government. Whether the pensioner was alive or dead, it did not make any difference. (5 M.H.C.R. 371; 1 B. 75; 17 I.A. 187; 18 M. 187, F.); 26 M. 69. A

(3) Government of India acting as agent to Ceylon Government—Effect.

Pensions payable to certain “*Candyan Pensioners*” (descendant of the ancient kings of Candy kept as State prisoners) in British India, paid by the Government of India as Agent of the Government of Ceylon were exempt from attachment. It is not pensions granted by the British India Government alone that are exempted but all political pensions. 5 B. 249 (P.C.); 18 C. 216 (223); 29 C. 707, R.; 26 M. 423. B

(4) Stipends allowed to Mysore Princes.

The stipends allowed by Government to the members of the Mysore family cannot be attached. 7 W.R. 169. C

(5) Pay of Carnatic stipendiary.

The ——— is not liable to attachment in execution of a decree against the stipendiary. 4 M.H.C. 277. D

(6) Bonus from Government.

Where the execution-proceedings had commenced before 1st June, 1882, a bonus from Government, not being pension under S. 11 of the Pensions Act, 1871, was held to be attachable in execution. S. 266 of the Code has, however, been so altered recently as to exempt a bonus or gratuity received from Government, from attachment in proceedings in execution commenced on or after 1st June, 1882. (4 B. 432, F.); 5 M. 272; see, also, 6 A. 632. E

3.—“Exemptions from attachment” —(Continued).**(7) “Arrears of “Yeomiah” pension.**

- ———— due to the estate of a deceased *Yeomiahdar*, which have accidentally accumulated, are not subject to attachment in satisfaction of a decree of a civil Court obtained against the representative of the *Yeomiahdar*. 5 M.H.C. 371 (372). F

(8) Allowance under Bombay Act XI of 1843.

- An ———— cannot be attached while in the Collector or other disbursing officer. 10 B.H.C. 40. G

(9) Funds representing political pensions due at date of pensioner's death.

- (a) The ———— but which remained unpaid in the hands of Government is not liable to attachment. 26 M. 69 (71). H
- (b) The character of the fund remains unchanged as long as it remains unpaid in the hands of the Government irrespective of whether the intended beneficiary is alive or dead. 26 M. 69 (71); see, also, 5 M. H. C. 371; 1 B. 75; 17 I.A. 181; 18 M. 187. I

(10) Private pension.

- ———— can be attached. 6 C.L.R. 19. J

(11) Share in Government revenue, whether pension.

- Where the Government directed that out of certain revenues, the members of certain family should have certain shares assigned to them, held that these shares were not pensions within the meaning of the Pensions Act, and were not exempt from attachment in execution of a decree. 20 A.W.N. 161 (4 B. 431, R.). K

(12) Pensions Act (XXIII of 1871), S. 11—*Toda-giras hak*, whether exempt from attachment as pension.

- The word “pension” in S. 11 is used in the sense of a periodical allowance or stipend granted, not in respect of any right, privilege, perquisite, or office, but on account of past services or particular merits, or as compensation to dethroned princes, their families and dependants. So, a *toda-giras hak* in the hands of a *mamlatdar*, granted to him for his rendering certain services when required, cannot constitute a ‘pension’ within its meaning in S. 11 of Act XXIII of 1871 so as to be exempt from attachment under a decree of a Civil Court. 4 B. 432.L

(13) Allowance as compensation for loss.

- An allowance given to a person, as compensation for the loss sustained by him by reason of the improper resumption by Government of certain lands which belonged to him, cannot be regarded as a pension allowance within S. 11 of the Pensions Act, and is, therefore, liable to attachment in execution. 8 C. W. N. 665. M

(14) Arrears of pensions due.

- In case of pensions not exempted from attachment, it is only arrears in respect thereof actually accrued due that are attachable in execution of a decree. 6 C.L.R. 19 (20) (14 M. I. A. 40; 7 M.L.R. 186, F.). N

(15) *Babuana* allowance.

- A ———— is capable of being attached and sold in execution. 6 C.W.N. 796. O. O

3.—“*Exemptions from attachment*”—(Concluded).

- (16) Decree in Civil Court—Attachment—Unenfranchised Inam—Sale in execution—Pensions Act (XXIII of 1871), Ss. 4 and 11.

An unenfranchised inam can be attached and sold in execution of a decree of a Civil Court. 6 M.L.T. 192. P

While S. 4 of the Act prevents a Civil Court from entertaining a suit relating to a pension or grant of money or land revenue it has been thought necessary in S. 11 to state that certain pensions are not liable to attachment by the Civil Courts. The omission of grants of money or land revenue is significant and shows clearly that under Act XXIII of 1871 such grants are not exempted from attachment. 6 M.L.T. 192. Q

- (17) Definition of political pension—Property granted in lieu of cash political pension, whether can be attached in execution of decree.

One K had been granted a political pension of Rs. 4,000 per annum for which the grant of a *taluka* was subsequently substituted at a given rent. According to the grant the *taluka* had to continue in perpetuity in the manner of an hereditary holding, *Zamindari mowroosi*, in possession of the grantee's heirs and successors, provided they paid the revenue to Government. Since the grant the property had all along been traced by the members of the family of K as an ordinary *Zamindari holding*:

Held, that the property could not be treated as a political pension and was liable to attachment in execution of a decree. 26 A. 617; 4 B. 492, R. R

12. All assignments¹, agreements, orders, sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in section 11, in respect of any money not payable at or before the making thereof, on account of any such pension, pay or allowance, or for giving or assigning any future interest therein, are null and void.

Assignments, etc., in anticipation of pension, to be void.

(Notes).

1.—“*Assignment.*”

- (1) Nature of section.

S. 12 of the Pensions Act prohibits only the assignment of any money payable on account of any such pension, pay or allowance as is mentioned in S. 11. 30 M. 153=2 M.L.T. 33. S

- (2) Assignment of pension in lieu of dower.

An assignment of a pension in lieu of dower, being an assignment of money payable on account of a pension, is null and void under S. 12 of the Pensions Act, and cannot confer a right of suit on the assignee. 6 A. 630=4 A.W.N. 209. T

- (3) Assignment of pension made before the Act.

An assignment of a pension made before Act XXIII of 1871 was passed, cannot be invalidated by S. 12 of the Act, which had no retrospective operation. The assignee could, therefore, sue on the assignment. 7 A. 886=5 A.W.N. 267. (6 A. 630, reversed). U

1.—“Assignment”—(Concluded).

•(4) Decree specifically passed against *Jaghir* income—Attachment.

When a decree has been specifically passed against *Jaghir* income, the Court executing the decree cannot refuse to attach it, notwithstanding the provisions of S. 12 of the Pensions Act. P.L.R. (1900) 361. Y

(5) Political pension of samorin of Calicut —“Payable”—Power of disposition by will.

The Zamorin, by his will, bequeathed to the plaintiff the *malikhana* due to him from the Government which might be in arrears at the time of his death. The *malikhana* was a political pension of Rs. 6,000 a month, payable quarterly. The Zamorin died on the 6th of August 1992. The plaintiff having obtained a certificate under Pensions Act, S. 6, now sued the new Zamorin to recover the proportionate amount of the pension for the current quarter up to the time of the Zamorin's death :

Held, that the plaintiff was not entitled to recover the amount sued for. 21 M. 105. W

The word payable is used in its primary sense, namely, deliverable in performance of an obligation, in other words, that actual payment was demandable by the person entitled. 21 M. 108. X

An allowance granted by the Government, not in respect of a right, but as a matter of favour to a prince, after his deposition from the Raj, was held to amount to a political pension within S. 12 of the Pensions Act. 21 M. 105. Y

(6) Grant made as compensation for abolition of office hereditary in plaintiff's family.

A—is assignable. 2 M.L.T. 33 = 30 M. 153. Z

• 13. Whoever proves to the satisfaction of the Local Government that any pension is fraudulently or unduly received by the person enjoying the benefit thereof shall be entitled to a reward equivalent to the amount of such pension for the period of six months.

14. The Chief Controlling Revenue Authority ¹ may, with the consent of the Local Government, from time to time, make rules ² consistent with this Act respecting all or any of the following matters :—

(1) the place and times at which, and the person to whom, any pension shall be paid ;

(2) inquiries into the identity of claimants ;

(3) records to be kept on the subject of pensions ;

(4) transmission of such records ;

(5) correction of such records ;

(6) delivery of certificates to pensioners ;

(7) registers of such certificates ;

(8) reference to the Civil Court, under section 6, of persons claiming a right of succession to, or participation in, pensions or grants of money or land-revenue payable by Government ;

and generally for the guidance of officers under this Act.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(Notes).

1.—“ Chief Controlling Revenue Authority.”

(1) Power of Chief Controlling Authority.

The Chief Controlling Authority has no power to hear appeal against or revise order granting certificate under S. 6. 23 B. 676. A

(2) Rule 6 framed under the Act—Suit for recovery of *warshasan* allowance—Collector's certificate—Cancellation of certificate by Revenue Commissioner.

When a certificate is granted by the Collector under S. 6 of the Pensions Act (XXIII of 1871), the presumption is, until the contrary is shown, that the order for granting the certificate was made, as is contemplated by the 6th rule framed under the Act, with the previous sanction of the Revenue Commissioner by the Collector himself. But the Revenue Commissioner has no power vested in him to cancel a certificate granted by the Collector, and there is no rule which provides for the revision by the Revenue Commissioner of the Collector's action in granting certificates or for the cancellation by him of the certificates granted by the latter. 23 B. 676. B

2.—“ Rules.”

I.—BENGAL.

Notification dated the 7th September, 1875 (published in the Calcutta Gazette of 1875, Pt. I, p. 1144).

The following rules framed by the Board of Revenue, L.P., under S. 14, Act XXIII (The Pensions Act) of 1871, having been approved by the Lieutenant-Governor, are published for general information :—

Rules framed by the Board of Revenue, L.P., with the consent of the Local Government, under S. 14, Act XXIII (The Pensions Act) 1871.

Section 1.

PRELIMINARY.

The rules governing service pensions, extraordinary pensions and gratuities for service not entitling to pension, are contained in the Civil Pension Code published under the authority of the Government of India. The following instructions therefore apply to territorial and political pensions only, disbursed through the revenue authorities.

Section 2.

THE PLACE AND TIMES AT WHICH, AND THE PERSONS TO WHOM, PENSIONS, ARE TO BE PAID.

1. As a general rule, pensions are payable at the District Treasury upon which a permanent payable order has been issued by the Accountant-General.
2. But pensioners residing within any sub-division of a district, and not under cl. 8 of this section, exempted from attendance in person, may, by presenting themselves monthly before the Sub-Divisional Officer, obtain payment of their pensions by cheque upon the sub-divisional treasure

2.—“Rules”—(Continued).

I—BENGAL—(Continued).

chest, their attendance on each occasion at the District Head Quarters being dispensed with. In these cases the responsibility of the District Officer will remain undisturbed, and payment will not be made till the Sub-Divisional Officer, having forwarded the pensioner's receipt and his life certificate to the District Officer, obtains in return a cheque for the amount of pension due.

3. Moreover, once in every six months the permanent orders of every sub-division will be recalled to the head-quarters of the district, and pensioners will be required to present themselves for payment before the District Officer.
4. A Commissioner may, on application and on sufficient cause shown, permit transfer of payment from a treasury in his division to any other treasury in British India. This power does not extend to political pensions in cases where the pensioner resides, by order of Government, in a particular place.
5. Copy of the order directing the transfer should be forwarded by the Commissioner to the Accountant-General, Bengal, together with a brief narrative of the origin and particulars of the pension; and the District Officer of the district, from which the payment is transferred, should be instructed to return his portion of the permanent payable order to the Accountant-General. The Accountant-General will then issue a fresh permanent payable order to the Officer who will in future pay the pension, or, if that Officer belongs to another province, will move the Accountant-General of such province to do so.
6. As a rule, pensions shall be paid monthly.
7. Should a pensioner neglect or omit to apply for payment for six months, the District Officer shall obtain the sanction of the Commissioner before paying the arrears or continuing the payment of the pension for the future. Should the neglect or omission to apply for payment extend to one year, the sanction of the Board of Revenue must be obtained. When an interval of two years has been allowed to elapse, the case must be laid before Government for orders.
8. Except in the cases specified below, pensioners must appear in person at the time of taking payment of their pensions:—
 - (a) pensioners of rank, who may be exempted by order of Government from appearing personally before the District Officer;
 - (b) female pensioners who, according to custom, cannot with propriety appear in public, and
 - (c) pensioners who are disabled from appearing by illness or bodily infirmity. In cases (b) and (c) the Commissioners shall have power to grant exemption from personal attendance.
9. Pensions of pensioners of rank, specially exempted by Government, shall be paid to an agent holding a power-of-attorney, upon the production of the permanent order and of a separate receipt.
10. Pensions of pensioners exempted under heads (b) and (c) of cl. 8 of this section may be paid to an agent on their behalf, on production of a life certificate signed by an Officer of Government, or by some other well-known and trust-worthy person, of the permanent order, and of a separate receipt.

2.—“Rules”—(Continued).

I—BENGAL—(Continued).

11. Commissioners may authorize the payment of arrears due to a deceased pensioner (after such investigations as shall satisfy them of the actual date of the pensioner's demise, and that the persons applying for the arrears due are his legal heirs) in cases in which the arrear is due for a period not exceeding one year. When the arrear is due for a period exceeding one year, reference shall be made to the Board of Revenue.

Section 3.

INQUIRIES INTO THE IDENTITY OF CLAIMANTS.

1. Pensioners who appear in person to receive payment, must be identified by comparison with the particulars given in the portion of the permanent payable order kept by the disbursing officer, who should take every precaution against fraudulent personation. Females, or respectable male pensioners, who may reasonably object to appear at his public office, may be identified by him in private, or at his own house.
2. In the case of female pensioners not exempted from personal attendance under cl. 8 of S. 2, a female may be employed to assist in the identification.
3. In the case of pensioners exempted from attendance under cl. 8 of S. 2, the disbursing officer must take all possible precautions to prevent imposition, and must, before the first payment in each year, require proof, not only of the existence of the pensioner, but also, when the exemption is based on the ground of illness or bodily infirmity, of the pensioner's inability to appear. The opportunities afforded by visits, and by the cold-weather tours of European officers, should be taken advantage of to verify the continued existence of such male pensioners as are exempted from personal attendance.
4. When a pensioner can write, his signature on the receipt should be compared with that on the disbursing officer's portion of the permanent payable order at the time of payment.
5. In all cases of exemption of male pensioners from personal attendance to draw their pensions, if the disbursing officer entertains any doubt, which he has no convenient means of removing, he should refer the case to the Commissioner for orders. Payment of the pension, however, should not be suspended pending the result of such reference.

Section 4.

DELIVERY OF CERTIFICATES TO PENSIONERS.

1. On the receipt, by the disbursing officer, of the permanent payable order, he shall summon the pensioner, and on his appearing, shall make over to him his portion of the permanent payable order, and explain to him at what times he can draw his pension, and how he must proceed for the purpose. No other certificate need be given.
2. When the pensioner is exempted from appearance in person under cl. 8, S. 2, the permanent order may be made over to any person authorised to act on the pensioner's behalf.
3. When the pensioner's portion of the permanent payable order is much worn, or its back is filled with entries of payment, he should return

2.—“Rules”—(Continued).

I—BENGAL—(Continued).

it to the disbursing officer, who will forward both portions of the order to the Accountant-General, and obtain from him a duplicate order bearing the same number and date.

4. If the pensioner loses his portion, the disbursing officer's half may be returned to the Accountant-General, who will issue a duplicate order, bearing the same number and date as the original.

Section 5.

RECORDS TO BE KEPT ON THE SUBJECT OF PENSIONS, CORRECTION AND TRANSMISSION OF SUCH RECORDS AND REGISTERS OF CERTIFICATES DELIVERED TO PENSIONERS.

1. In each Collectorate a list of pensions shall be kept up in the form given in Appendix A. (N.B.—This will take the place of Register 55).
2. All pensions not drawn for two years shall be struck off this register. If renewed by order of Government, a fresh entry will be made in the register.
3. Should a pension not be claimed for six months, the counterpart of the permanent order shall be returned to the Accountant-General.
4. If the pensioner afterwards appear, the District Officer may, subject to the rule contained in cl. 7, S. 2, reclaim the permanent order and renew the payment, and, subject to the same rule may make payment of arrears.
4. Upon the death of a pensioner the Collector should at once report the circumstance to the Accountant-General, and return the original permanent order to his office.
5. When pensions are granted, the Accountant-General issues permanent payable orders to the disbursing officer of the station at which the pension is payable, directing him to pay periodically, until further notice, the amount of the pension upon the production of the counterpart of the order, and a separate receipt according to the prescribed form. These orders should be entered in the register of permanent orders prescribed by the Comptroller-General in the circular No. 171, dated the 15th April, 1874.
6. When under cls. 2 and 3, S. 2, payment of any pension is permitted at a sub-division, the permanent order of such pension shall be forwarded to the Sub-Division, a note to that effect being made in the Register of Permanent orders at the head-quarters station. At each sub-division a register of permanent orders so received shall be kept up in the same form as the register prescribed for the head-quarters station.
7. Upon presentation of a claim for payment, the Collector should at once record the sum paid upon the permanent order, and enter the amount in the cash-book, and submit the separate receipt (Appendix B) with his treasury account to the Accountant-General, as a voucher in support of the charge.

Section 6.

DISPOSAL OF CLAIMS TO RIGHT OF SUCCESSION TO, OR TO PARTICIPATION IN, PENSIONS OR GRANTS AND GRANT OF CERTIFICATE TO CIVIL COURT IN CERTAIN CASES.

1. The Board of Revenue is competent to sanction the continuance of hereditary pensions when the hereditary title has been already recognised

2.—“Rules”—(Continued).

I—BENGAL—(Continued).

by Government or decreed by a competent Court of Justice. But it is to be borne in mind that the Government never undertook absolutely to pay the pensions included in the permanent settlement, and that, if a pension has unadvisedly been continued to heirs, the hereditary nature of the gratuity may, on the death of the incumbent, again be questioned.

2. As a general principle, pecuniary grants will not be continued after the death of the parties in whose favour they were originally made. Pensioners whose pensions are granted for life only, and are resumable at their decease, are to be in no way encouraged by the Local Officers to hope that their pensions will be continued to their heirs; and thereby induced to neglect making a proper provision for their families. The Board is to submit to Government for decision any case in which it may be of opinion, on the decease of a life-pensioner, that the pension, or any part thereof, should be continued to the heirs.
 3. The principles laid down in the memorandum by Mr. F. Millett, printed in Appendix C, are under the orders of Government, to be followed in recommending, or deciding upon, the continuance or discontinuance to heirs of the various classes of pensions with which the memorandum deals.
 4. As a rule, the distribution of pensions is irrespective of Hindu or Muhammadan law, and dependent on the pleasure of Government only.
- In cases where the original grant of a pension to two or more persons was joint and undivided, the survivor or survivors will be considered entitled to retain only an exact half, or lesser share, according to circumstances, of the whole sum, without reference to sex.
5. But when the grant was of a specific sum annually payable in perpetuity and unconditionally, the District Officer may, with the sanction of the Commissioner and the Board of Revenue, grant a certificate to the Civil Court under S. 6, Act XXIII of 1871, where the question at issue is the right of one or other of two parties to receive any portion of such grant.

APPENDIX A.

(See S. 5, cl. 1).

(Form A—Register I of Territorial and Political Pension—of Punjab Rules modified chiefly by omission of columns not applicable to the Lower Provinces).

1. No.
2. Name and father's name of pensioner.
3. Residence. } *a* Pargana.
 } *b* Village.
4. Age at the date of grant of pension.
5. Description of pensioner's person.
6. Amount of pension. } *a* monthly.
 } *b* per annum.
7. Date of Government sanction.
8. Brief, but accurate, statement of circumstances of grant, and explanation whether the grant is for life, for more than one life, hereditary or absolutely perpetual.
9. Date of decease of pensioner.

2.—“ Rules ”—(Continued).

I—BENGAL—(Continued).

APPENDIX B.

(See S. 5, cl. 7).

Form of receipt for payment.

See Form C. of Comptroller-General's Circular No. 171, dated the 16th April, 1874.

Bill for pensions chargeable to (major head) paid at the Treasury
between and 187 . .

We do hereby acknowledge to have received the amounts set against our respective names as pensions due for the periods noted, under the orders quoted in our respective permanent payable orders.

- | | |
|-------------|---------|
| 1. Payment. | } Date. |
| | |
2. Number of permanent payable order.
 3. Name of pensioner.
 4. Monthly amount.
 5. Period of claim.
 6. Amount paid.
 7. Signature of payee with stamp, if payment exceed Rs. 20.

APPENDIX C.

(See S. 6, cl. 3).

Memorandum by Mr. F. Millett, on pensions and charitable or other allowances dated 12th May, 1845.

The Government never undertook absolutely to pay the pensions included in the permanent settlement.

Section 74, Regulation VIII, 1793, provided “ with respect to any of the existing established zamindari charges, such as pensions, charitable or other allowances, which it may be thought proper to continue, they shall be paid by the Collectors, &c.”

Regulation XXIV, 1793, prescribed the rules for determining their continuance or discontinuance; the fundamental principle being that all such pensions and allowances were *gratuitous*.

The following are the principal provisions of that Regulation :—

“ Pensions received by virtue of sanads granted before the Dewani, or since granted with the sanction of Government, and pensions received from before 1179 (Country Era), to be continued to the grantees or original holders. But if the grantees or original holders be dead, the pensions not to be continued to their heirs or descendants without the sanction of Government; and—

“ No pension after the death of the person then entitled to it to be continued to his descendants without the like sanction, whether the grant was, in either case, according to the terms of it, hereditary or otherwise.”

“ Whenever Government orders the continuance of a pension, whether to the original holder or his heir, the Collector to give him a certificate, stating the title of the party thereto *during his or her life*.”

“ The Collector to keep a register of these certificates; noting therein such personal identifications of the parties as might detect any attempt to transfer the certificates to others.”

“ The pensions and allowances being *gratuitous*, the determining upon the continuance or discontinuance of them under the rules prescribed, reserved to Government.”

It appears to me plain that, according to this Regulation, every pension confirmed was to be confirmed as a *life-pension* only; and that, on the death of any pensioner, the case of any new claimant was to be submitted to Government for its determination.

2.—“Rules”—(Continued).

I.—BENGAL—(Continued).

Section 6 of Regulation XXIV, 1803 (Ceded Provinces), provided that pensions granted to fakirs, and other religious persons, for the purpose of lighting Mausoleums or Mosques, or for that of repairing them, as also to enable them to perform their religious ceremonies, usual in the Mohurum, were to be continued; but that pensions of this description were to be considered as of a personal nature, and that the Collector was to be responsible for their being applied to the purpose for which they were bestowed.

Certificates were under this Regulation to be granted for pensions renewed on the death of pensioner, and registers of certificates to be kept as under Regulation XXIV, 1793, and section 16 declared that the continuance or discontinuance of pensions was, after the death of the persons then receiving them, to depend solely on the pleasure of Government.

I reconcile Sections 6 and 16 in this way. Pensions received by fakirs at the date of the Regulation for certain purposes were to be continued to them, but if they applied them to other purposes, they would be resumed. On the death of the then holders, the pensions were to be continued to their successors or not as Government might determine, each renewal requiring a specific order.

By section 30, Regulation XII, 1805, the provisions of Regulation XXIV, 1793, were made applicable to pensions and allowances granted for religious purposes in Cuttack with these provisos:—

I. that pensions obtained from the Government of Berar, under grants prior to October, 1803, should be continued to the then incumbents, and, on their death, should descend to their heirs and successors, or revert to Government, as should appear to the Governor-General in Council, on a consideration of the tenor of the grant, and all the circumstances of the case, to be proper, under S. 4 of the said Regulation;

II. pensions received, under whatever authority, for three or more years before October, 1803, to be continued to the then incumbents for life, but on their death to revert to Government, unless any particular reasons should appear to Government to exist for continuing them to their heirs and successors.

In the terms “on a consideration of the tenor of the grant” contained in the proviso I, we find the first indication of Government prescribing a rule to itself respecting the continuance of a pension to heirs and successors of incumbents. S. 4, Regulation XXIV, 1793, to which reference is made, contains no such rule.

By section 7, Regulation XXII, 1806, the Board of Revenue were instructed, in determining whether, on the death of a pensioner, the pension, or any part of it, should be continued to heirs or successors, “to ascertain particularly the situation and circumstances of the person claiming the continuance of the pension, and not to comply with any applications of that nature unless, on the ground of poverty or other substantial reason, the party claiming it shall have a strong claim on the indulgence of Government.”

This relates to pensions to a certain amount (fifty rupees) left to the Board’s decision, but I presume the principle was applicable to all.

S. 8 enjoined Collectors to discontinue the payment of all pensions, where the persons to whom they had been adjudged had died, until it could be determined whether they were to be continued to heirs.

Section 9 had in view the commutation of money pensions for grants of waste land or property.

It begins by repeating the declaration that pensions are gratuitous, and that the continuance or discontinuance of them is to depend on the pleasure of Government.

It then enacts that adjudged pensions are not to be commuted for grants of land, except with the consent of the pensioner, and adds these further provisos:—

2.—“Rules”—(Continued).

I—BENGAL—(Concluded).

That pensions granted for, and *bona fide* appropriated to, the support of institutions, either of the Hindu or Muhammadan religion, shall be continued for the support of such institutions, unless the present incumbents or their successors shall, of their own free will and accord, agree to accept waste lands in lieu of the said pensions, and that no pensions which are declared to be hereditary, either by the terms of the grant, or by any existing Regulations, shall be commuted without the consent of the present pensioners or their successors.

The first proviso has been quoted as containing an abstract rule that pensions for the support of the institutions therein described shall be continued in perpetuity; but considering the whole scope of the section, it seems to me rather to mean, that so long as the allowances are continued by the pleasure of Government, they shall be continued in the shape of money payments, unless the incumbent for the time being consents to a commutation for land.

So also in respect of pensions which, in consideration of the terms of the grant, the Government may hereafter continue to the heirs of present incumbents. These shall likewise be continued in the shape of money payments, unless with the consent of the heir to whom it is continued it shall be commuted for land.

The same rule to apply to pensions declared hereditary by the Regulations, *i. e.*, those described in section 2, Regulation XXXIV, 1795, and section 2, Regulation XXIV, 1803, which are declared to be property, and liable to be sued for and inherited as such, and are distinct from the gratuitous pensions.

Suppose, then, a case in which the grant was not hereditary by the terms of it, but which the Government thought it right to continue to the heir of a deceased incumbent, they might insist on his taking land in lieu of it, or renouncing all claim to the allowance.

Sections 2 and 3, Regulation XI, 1813, enact that all pensions shall be stopped until those receiving them prove that they are either the original grantees, or that they have been regularly declared entitled to succeed to the enjoyment of the pensions and that new registers shall be made and corrected as often as any pensions revert wholly or in part to Government, or whenever other individuals than those by whom the pensions are at present received shall be adjudged entitled to the reversion of them.

So far, then, as the law is concerned, it appears to me that the continuance or discontinuance of any pension or allowance on the death of an incumbent rests entirely in the discretion of Government, that when continued it should be for the life of the applicant only.

In practice, I believe, the Government has very much fettered itself in the exercise of this discretion.

II. BOMBAY.

Notification No. 6849, dated 23rd December 1879, B.G.G. 1879, Pt. I, p. 1020.

I. Under S. 5.

For rules, 1—7, See S. 5 *supra*.

II. Under S. 8.

For rules, 8—12, See S. 8 *supra*.

III. Under S. 14.

Place of payment
of pensions and
grants.

13. Pensions or grants will be paid at the following places,
namely:—

(1) If payable on behalf of a religious institution, at the treasury of the District or Taluka in which such institution is situated, when the amount of the pension or grant

2. — "Rules"—(Continued).

II. BOMBAY—(Continued).

exceeds Rs. 5 per annum or, whatever the amount, when there is no hereditary patel in the village in which such institution is situated, and through the patel of the village in which such institution is situated when the amount does not exceed Rs. 5 per annum and there is an officiating hereditary patel in such village.

(2) If payable on behalf of a religious institution in foreign territory, at the nearest Government Treasury.

(3) If the pension or grant is personal, at the treasury most convenient to the recipient.

Orders for permitting transfers of payment under the above cl. (3) will be made by the Collectors if the transfer sought is from one treasury to another within the same Collectorate, by the Commissioners, if the transfer sought is from a treasury in one Collectorate to a treasury in another Collectorate within the same division, and by Government in any other case.

14. All pensions and grants shall be deemed to be due on the 1st May next after the completion of the year in respect of which they are payable, but shall ordinarily be payable only in the months respectively fixed, or hereafter to be fixed, by or under the orders of Government for payment of pensions and grants of the various descriptions. But when payment in monthly or quarterly instalments has been directed by the Collector under r. 8, payments will be made in accordance with such direction.

Persons to whom payments are to be made.

15. Pensions and grants will be paid only to those names that have been authorizedly entered in the records as the payees thereof, or to their duly empowered attorneys or mukhtars, or, if they are minors, to their administrators.

Except as is otherwise provided in Rule 23, payments will be made to an attorney, mukhtiar, or administrator only, on his satisfying the disbursing officer by the production of a certificate, signed by a Magistrate or by some other well known person of respectability, that the payee was living on the last day of the year or other period for which the pension or grant is due.

Life-certificates when necessary.

16. In the case of pensions or grants which Government recognize as alienable, the name of the lawful holder for the time being shall, subject to the provisions of Rules 17 and 18, be entered in the records as payee.

But if any such pension or grant is continuable by Government only so long as the original grantee and certain of his descendants shall be in existence, and the payee has obtained a transfer of the same by sale, gift, mortgage, or the like, such payee must produce at the time of each payment a certificate from the Mamlatdar or Mahalkari of the taluka or Mahal in which the original grantee or his descendants reside, or if their residence be in foreign territory, of some British officer resident in the said territory, that such grantee or his said descendants (who should invariably be named) on whose behalf payment is claimed was or were alive on the last day of the year or other period for which such payment is due.

Life-certificate of original grantee or of his descendants when necessary.

Mutation of payees' name. 17. Applications for mutation of payees' names in the records shall be received and disposed of by the Collectors.

2.—“ Rules ”—(Continued).

II—BOMBAY—(Continued).

In the case of alienations, and

In the case of a transfer of any pension or grant which Government recognize as alienable such mutation may be made on obtaining the consent in writing of the existing payee without further enquiry.

In the case of death of former payee.

In the case of the death of a payee, the Collector may require the production by the applicant of a certificate of heirship and of such other evidence as he deems fit.

When application for mutation of names may be treated as a claim under Section 5 of the Act.

But whenever there is any dispute between conflicting parties, and whenever the Collector doubts whether the pension or grant is any longer continuable, the application shall be regarded by him as a claim under Section 5 of the Act, and shall be dealt with accordingly.

Mutation of names consequent upon decision of claim under Section 5 of the Act.

Any mutation of names rendered necessary by the decision in any claim under Section 5 of the Act (including applications of the nature specified in the last preceding para. of this Rule) may be made by the Collector without further investigation.

Whose name may be entered as payee.

18. As a rule the name of one person only will be entered as payee of each separate entire pension or grant.

In the case of two or more joint transferees, and
In the case of joint transferees, and

Government recognize as alienable they must elect which one's name shall be so entered, and in the event of their failing so to do within such period as shall be fixed by the Collector, the Collector shall enter the name of such one of them as he deems fit.

In the case of joint heirs.

In the case of joint-heirs, the Collector will determine who is the eldest male representative of the senior surviving branch of the original grantee's or of the transferee's family, or in the absence of male heirs

who is the senior heirress and enter his or her name as payee : provided that at the request of the person thus entitled to be entered as payee the name of any other member of the family may be substituted by the Collector for that of the said person during such person's life-time.

19. If any pension or grant has been hitherto entered in the records in the joint names of two or more persons, or, if any division of a pension or grant has been recognized, and the shares entered separately in the names of the respective co-sharers, such entries may hereafter be continued ; but no such new entries shall be made in the records except with the previous sanction of the Commissioner, which shall be given only under very special circumstances.

But Collectors may, on written application, sanction sub-divisions of pensions or grants by disbursing officers at the time of payment by special written order in each case.

20. Whenever in consequence of disagreements amongst joint-payees for any other reason their joint receipt shall not be obtainable for any payment already due, the Collector may authorise such payment to be made to any one or more of such joint payees who are willing to pass a receipt.

21. The persons recorded as the payees of pensions or grants and the persons to whom any payment may be made under the last preceding rule, are not necessarily entitled to appropriate the whole of such pensions, grants or payment to themselves, but are responsible for distributing the same to all co-sharers, or sub-sharers in the proportions to which they are respectively entitled.

• Payees responsible for proper distribution of pension or grant to sharers.

2.—“ Rules ”—(Continued).

II—BOMBAY—(Continued).

22. Except, as is otherwise provided in r. 23, a Descriptive Roll in the form of Appendix A, shall be kept by the disbursing officer of every payee entitled to receive payment of a pension or grant from him. A copy of such Roll under the disbursing officer's signature shall be furnished to the payee for production by him at the time of each payment, which shall be noted therein in the manner shown in the form.

The person applying for payment must be identified by comparison with the particulars given in the Descriptive Roll, and the disbursing officer should take every precaution against fraudulent personation. When the payee can write, his signature should, at the time of payment, be compared with that in the Descriptive Roll in the disbursing officer's possession.

Descriptive Rolls and Life-certificates may be dispensed within certain cases.

23. Descriptive Rolls and Life-certificate may be dispensed with in the case of natives of rank and pardah-posh ladies ; but the disbursing officer will not on that account be exempt from the general responsibility which necessarily attaches to all payments.

Descriptive Rolls will not be necessary in the case of pensions or grants on account of native religious or charitable institutions which are paid to Panches or Committees or to the village-patels, nor in the case of payees of allowances which have been declared to be continuable hereditarily.

24. Each commissioner will prepare under his signature lists in English and in the Vernacular of all pensions and grants in each Collectorate in his Division and furnish printed copies thereof to the Mamlatdars, the Collectors, their Assistants and Deputies, the Accountant-General and to Government.

Printed lists to be kept of sanctioned pensions and grants.

Where such lists have already been prepared under the signature of the Alienation Settlement Officer, new ones need not be prepared.

25. A monthly statement of all proposed alterations in or additions to the said lists in consequence of decisions or orders passed during the preceding month affecting the same shall be submitted by each Collector on such date as may be fixed for their submission in communication with the Accountant-General, to the Commissioner, Central Division, who shall cause the same to be promptly scrutinized in his office, and after counter signing the same, shall cause duplicate thereof to be sent to the Accountant-General with the orders of the Commissioners duly recorded thereon ; and shall also direct that the lists in his own office and in the various offices in the Collectorate shall be corrected accordingly. The Accountant-General shall also correct his lists in accordance with the duplicate copy of the Statement so countersigned and forwarded to him.

“ No pension or grant shall be entered in or struck out from, the accounts of the said lists, except with the previous sanction of the Commissioner.”

(Note).

Substituted by Notification No. 10347, dated 24th December, 1885, B.G.G. 1885, Pt. I, p. 1490 for the old one.

2.—“Rules”—(Continued).

II—BOMBAY—(Continued).

26. Disbursing officers will, on the 1st of May of each year, or as soon after as possible, prepare Ledgers (peta-khatwahis) agreeably to the Taluka Forms Nos. 21 and 22 contained in Hope's Manual of Accounts, and will keep Books in the Taluka Forms Nos. 11 and 12 contained in that Manual, and will be held responsible for the correctness of the entries in those Ledgers and Books and for their being properly filled in from time to time.

27. Sanads in the name of the Secretary of State for India in Council will be executed by the Collectors, as authorised in the Government of India's Resolution No. 684, dated 31st May 1878*, Home Department (*vide* Government Resolution No. 3518, dated 14th June 1878, Judicial Department), in favour of the payee or payees for the time being of every pension or grant in respect of which the issue of such sanads has been or may hereafter be sanctioned by Government. Such sanads will be issued once for all, and sanads already issued by Alienation Settlement Officers or by Collectors or by any other officer authorized by Government in this behalf shall be deemed to have been issued under this Rule.

The terms and conditions to be inserted in these sanads will be such as Government may from time to time authorize or as may already have been so authorized.

(Note).

* Superseded by the Government of India's Resolution, Home Department, No. 3-Judicial, dated 28th March 1895, re-published in Government Notification No. 2213, 485-501, dated 2nd April 1895, B.G.G. 1896, Pt. I, p. 397.

Registers of sanads to be kept. 28. Registers of these sanads will be kept by each Collector, and a general Register by each Commissioner.

The said Registers shall be open to public inspection during office hours, and extracts from the same shall be obtainable, subject to the same rules and to the payment of the same fees as apply to the case of Registers of the documents mentioned in cl. (d), S. 90 of the Indian Registration Act, 1877.

29. Reference to the Civil Court under S. 6 of the Act of any person claiming a right of succession to or participation in any pension or grant, or any other right relating to any pension or grant shall be made in accordance with S. 4 by the Collectors granting to such person a certificate in the form of Appendix B authorising the Civil Court to try the case set forth in such person's claim.

2.—“Rules”—(Continued).

II—BOMBAY—(Concluded).

APPENDIX B—(See r. 29).

Form of Certificate.

Whereas A.B. of _____ is desirous of preferring
claim against C.D. of _____ to establish his right to
(Here state clear the nature of the claim).

This is to certify that I, E.F., Collector of _____, do hereby allow, under S. 6
of the Pensions Act, 1871, that the said claim may be tried by any
Civil Court otherwise competent to try the same.

Dated at _____ (Signed) E. F.
this day of _____ 18 _____ Collector.
Seal
of the
Collector.

III. MADRAS.

Notifications.

For— making rules under the powers conferred by S. 14, see Madras Rules
and Orders.

IV. UNITED PROVINCES OF AGRA AND OUDH.

N.B.—For Notifications making rules under the power conferred by S. 14, see
N.W.P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 43.

POLITICAL PENSIONS.

For orders in regard to the pensions in the Province of Agra other than those
which are regulated by the Civil Service Regulations see the Board's
Extant Circular No. 2—VI.

N.B.—G.O.—An order of the Local Government G.G. O.—Ditto Government
of India.

The following are the rules governing political pensions in Oudh and those paid to
the Delhi ex-Royal Family :—

The Pensions Act.
Rules under—G.O.
No. 212-A, dated
30th May 1877
Gazette, Part I,
page 657, dated 9th
June 1877—G.O.
No. 73, dated 22nd
January 1879, and
G.G.O. (F.D.) No.
1326-G., dated 1st
July 1886.

Political pensions are drawn under the following headings :—

1. Territorial and political pensions.
2. Collateral relatives of the ex-King of Oudh.
3. Imtiazis.
4. Miscellaneous.

1. The Wasika pensions are under the immediate control of the Wasika Officer,
by whom all questions are decided, under the orders of the Commissioner of Lucknow.
Some of these pensions are governed by purely Mohammedan Law; others partly by
this law and partly by orders and rules laid down from time to time by the Government
of India, the former Residents of Lucknow, and by the Local Government as cases
have come up. Some of the pensions are hereditary; others lapse to Government.
Each will continue to be treated in the same manner as it has hitherto been.

The Wasika Office is invested with discretionary power, under the control of the
Commissioner of Lucknow, to grant or withhold certificates under the Pensions Act,
1871, for the trial of disputed claims to Wasika pensions in the Civil Court.

2.—“Rules”—(Continued).

IV—UNITED PROVINCES OF AGRA AND OUDH—(Continued).

2. The following rules sanctioned by the Government of India in September 1867 apply to the pensions of the collateral relatives of the ex-King of Oudh.

(i) The only persons who can be recognised as collateral relatives within the meaning of these rules are, firstly, those whose names are entered as such in one or other of the lists furnished to the Government by letter from the Secretary to the Chief Commissioner of Oudh, No. 1819, dated 18th September 1862; secondly, the heirs of those entered in the aforesaid lists; and thirdly, any persons inadvertently omitted from those lists whom the Governor-General in Council may, by special order, declare to be admitted among this class of beneficiaries.

(ii) On the death of a pensioner one-third of the original amount of the stipend will invariably be resumed.

(iii) When, under the operation of Rule (ii), the amount of pension inherited by one individual, would be reduced to any sum below Rs. 5, commutation will be compulsory, according to the following scale:—

Value of a life-annuity of one rupee per annum.

G. G. O. (F. D.) No. 1648, dated 23rd April 1863.

Age.	Value Rs.	Age.	Value Rs.
Under 10	13	45 to 50	9½
10 to 20	12½	50 to 55	9
20 to 25	12	55 to 60	8
25 to 30	11½	60 to 65	7
30 to 35	11	65 to 70	6
35 to 40	10½	Above 70	5
40 to 45	10		

Provided that commutation of pensions of minors will be deferred until they are of age.

(iv) The continuance of the two-thirds will not be claimable by the heirs as a right. It will be granted in whole, or in part, or not at all, according to the comparative poverty or affluence of the family concerned. In cases of misconduct on the part of the heirs it may be altogether withheld.

(v) Such amount as may be finally awarded to the heirs will remain entire in the name of one member of their body; the other heirs will receive their shares through him. It will be the duty of the treasury officer to take efficient measures for ascertaining from time to time that all the persons on whose account the head of the family is drawing money are still alive.

Notē.—The Local Government may relax this rule whenever its strict observance may be considered inexpedient.

(vi) In deciding what persons may be recognized as heirs, the rule of inheritance obtaining by law in the particular family will be followed; but in fixing the amount, if any, which shall be assigned to these persons, proper regard will be had to the financial condition of each. Provision will not be made for those dependents of a deceased stipendiary who may be without any legal status, except in special cases of extreme distress. In such cases the Local Government may recommend to the Government of India a subsistence allowance of Rs. 5 per mensem, to be deducted from the amount available for distribution among legal heirs.

(vii) Unmarried female pensioners will have the option of commuting their pensions on marriage for a sum equivalent to ten times the annual amount of their pensions, or of retaining them for life. It is to be distinctly understood that no portions of the pensions will be continued to their heirs. In the case of female minors

G. G. O. (F. D.)
No. 160 F., dated
22nd April 1876.

2.—“Rules”—(Concluded).

IV—UNITED PROVINCES OF AGRA AND OUDH—(Concluded).

the exercise of this option will be deferred until they come of age, unless previous commutation be specially sanctioned.

G. O. No. 126, dated 14th February 1884. The Local Government is authorized in the case of all ordinary pensions enjoyed by females for life or until marriage to sanction to the pensioner on marriage a final payment not exceeding five years' purchase of the pension.

(viii) Should a pensioner die without issue, leaving a widow destitute, such widow may be admitted to a continuance for life of one-third of her deceased husband's pension, the rest of the pension lapsing to the State.

(ix) The claims of persons who, being heirs of deceased collateral relatives of the ex-King, may have had their cases already disposed of on different principles from those embodied in the present rules, are not admissible to a re-hearing under these rules; but the Commissioner of Lucknow is empowered to relax this prohibition, should any case of great misfortune be brought to his notice.

(x) On the death of a pensioner, the local administration is empowered to sanction the continuance of such portion of the lapsed stipend as may be available under the provisions of rule (iii) in all cases except those in which the total amount to be so continued exceeded Rs. 50 per mensem, when the case must be submitted for the sanction of the Government of India.

3. Intiazi pensions are for life only. Claims to this class have all been decided and fresh claims have been barred since 1st July 1867.

Territorial and political pensions are chiefly those originally granted by the British Government on the annexation of the province. Some are perpetual and others only for a term of lives.

4. Miscellaneous political are the charitable political pensions.

The Commissioner of Lucknow is empowered to sanction, without reference to Government, the continuance or distribution of perpetual political pensions on the death of the original pensioner.

G. O. No. 2, 2nd January 1882.

V. CENTRAL PROVINCES.

Notifications.

For—making rules under the power conferred by S. 14. See Central Provinces Rules and Orders.

SCHEDULE.

(See Section 2).

Number and Year.	Title or Subject.	Extent of Repeal.
I.—BENGAL REGULATIONS.		
XXIV of 1793 ...	A Regulation for re-enacting, with Modifications, the Rules passed by the Governor-General in Council on the 10th June, 1791, for determining the Continuance or Discontinuance of the Pensions heretofore paid by the Proprietors and Farmers of Land, but included in the Jama or Revenue payable to Government at the Decennial Settlement, and also of the Pensions heretofore paid from the Sayer abolished.	The whole.

SCHEDULE—(Continued).

Number and Year.	Title or Subject.	Extent of Repeal.
I.—BENGAL REGULATIONS.—(Concluded).		
XXXIV of 1796 ...	A Regulation for re-enacting, with Modifications, the Rules respecting the Pensions payable from the Government and Moolky Treasuries in the Province of Benares.	The whole.
XXIV of 1808 ...	A Regulation for trying the Validity of Titles of Persons receiving, or claiming a right to receive Pensions, under the Denominations of Sallanah, Rozenah, or any other Description of Grant, in the provinces ceded by the Nawaub Wazir to the Honourable the English East India Company.	The whole.
I of 1804 ...	A Regulation for the better Management of the Invalid Jageerdar Establishments, and of the Invalid Pension Establishments.	Sections 23 to 26 inclusive.
XXII of 1806 ...	A Regulation for modifying the Rules hitherto observed in the admission and Payment of Claims to Pensions.	The whole.
II of 1811 ...	A Regulation for amending the existing Rules for the support of Invalid Native Commissioned and Non-Commissioned Officers.	The whole.
XI of 1813 ...	A Regulation for modifying some of the Rules before established respecting the Payment of Pensions, and for preventing the abuses committed in the receipt of Pensions.	The whole.
VI of 1817 ...	A Regulation to explain the Purport and Intent of the Provision contained in Section II, Regulation XXIV, 1808.	The whole.
II.—MADRAS REGULATIONS.		
I of 1803 ...	A Regulation for defining the Duties of the Board of Revenue, and for determining the Extent of the Powers vested in the Board of Revenue.	Section 43.
II of 1803 ...	A Regulation for describing and determining the Conduct to be observed by Collectors in certain cases.	Section 30.
IV of 1831 ...	A Regulation for better securing to the Grantees personal or hereditary Grants of Money or of Land Revenue, conferred by the Government in consideration of Services rendered to the State, or in lieu of resumed Offices or Privileges, or of Zamindaries, or Paleiyams forfeited or held under Attachment or Management by the Officers of Government, or as Yeomiahs or Pensions.	The whole.

Act XXIII, of 1871 (THE PENSIONS ACT).

SCHEDULE—(Concluded).

Number and Year.	Title or Subject.	Extent of Repeal.
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III.—BOMBAY REGULATION.

XXIX of 1827	A Regulation for bringing under the operation of the Regulations the Bombay Territories in the Dekkhan and Khandesh.	Section 6, clauses 2 and 3.
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IV.—ACTS.

XXXI of 1836	Government Grants	The whole.
XXIII of 1838	Exemption of Grants from attachment	The whole.
VI of 1849	An Act for securing Military and Naval Pensions and Superannuation Allowances.	The whole.

APPENDIX I.

United Provinces of Agra and Oudh.

Financial Department.

N.B. G.O.—An order of Government.

G.G.O.—Ditto Government of India.

PENSIONS AND PENSIONERS.

Pension applications. General instructions for observance of the existing rules for dealing with—

The attention of the Lieutenant-Governor has been drawn, both by official reports on the general question and by concrete cases which have come before him, to the serious delays that frequently occur in the disposal of pension claims. The hardship of withholding a pension from an official who has ceased to draw his monthly pay is obvious; and Article 1012 of the Civil Service Regulations conveys a special warning to all officers against causing such hardship. There are reasons to fear, however, that the warning is often overlooked, and His Honor desires to remind officers of the necessity for particular vigilance in this respect.

G. O. No. 4612/X
—P. 268, dated 27th
November 1899.

The Lieutenant-Governor considers that the existing rules as to the record of the service of Government officials and as to the submission of their pension claims to Government ought, if carefully followed, to secure the prompt disposal of applications for pension in all but very exceptional cases. It has been suggested that the service of each officer should be verified annually instead of at his retirement. The practical difficulties in the way of this change are insuperable: and the Government looks to a more scrupulous observance of the existing rules for a remedy to the delays which are now complained of.

There are three essential conditions to this observance—

- (a) the proper maintenance of service-books;
- (b) the proper compilation of the annual statement of establishment (Form 3), and its comparison with service books; and
- (c) the verification at the earliest possible date of an officer's service preliminary to the submission of his formal application for pension.

The rules regarding the maintenance of service books are clearly laid down in Articles 876 to 885 of the Civil Service Regulations. While it is recognised that each officer is responsible for seeing that his own service-book is properly kept up, the regulations insist on a *contemporaneous* attestation, by the head of his office, of each step in his official life, whether of promotion, reduction, leave, transfer, suspension or dismissal. This requirement is frequently overlooked. Service books are allowed to get out of date, and are then often apparently written up in batches in the most summary manner; while attestations are frequently made as matters of routine, without any special scrutiny and at periods long subsequent to the events to which they refer. It is with the object of preventing such practices that inspecting officers are required to examine the condition of the service books kept in the offices inspected by them. The check is not, however, in all cases effectual, and the decision of pension claims is constantly being hampered by difficulties which could not have arisen if the record of service had been punctually maintained. The Lieutenant-Governor, therefore, invites the attention of the heads of all offices where service-books are kept to the duty of contemporaneous attestation which is imposed on them by Article 876 of the Civil Service Regulations. An early opportunity should be taken of overhauling and bringing up to date all the service-books now in custody, and the subordinate officials who are entrusted with making the entries in the books should in future be strictly held to their responsibility for the immediate record of all relevant events and for putting the record without delay before the proper officer for attestation.

The second step towards facilitating the grant of pensions is to insure the correctness of the annual statement required by Article 55 of the Civil Account Code. The Accountant-General reports that, as a rule, this statement is not carefully checked with service-books before submission to his office. This precaution is specially enjoined in the last paragraph of Article 55. To its omission are attributable most of the discrepancies as to date of birth, nature and period of leave, and similar matters which delay orders on pension claims. In other respects also the experience both of the Secretariat and of the Accountant-General's office shows that the detailed instructions in Article 55 are frequently neglected. There is no excuse for this, and all officers who submit Form 3 statement are requested to see that due care is taken in its preparation in future. The Accountant-General will be asked to bring to the notice of Government the cases of offices from which the statement is submitted in an obviously incorrect or inadequate manner.

The third aid to the speedy disposal of pension claims is promptitude in carrying through the preliminary verification of service, required by Article 989 of the Civil Service Regulations. This process, uninteresting and wearisome though it may seem to the officers conducting it, is of serious moment to the official whose claims are under consideration. The difficulties that arise in its course, are mainly the result of neglect of rules by the head of the office or by his predecessors; and the length to which it is often protracted is usually indefensible. Greater alacrity is called for in dealing with verification cases, and especially in replying to references regarding them from the Accountant-General's office.

In this connection the attention of the heads of all offices is invited to Article 988 (b) of the Civil Service Regulations, by which special permission is given to the undertaking of the preliminary verification at any time within six months before the expected date of retirement of the officer concerned. This permission, the Accountant-General reports, is frequently taken advantage of in the case of superior servants. In the case of inferior servants, however, where the need for the prompt grant of pension is greatest, the procedure is rarely followed and the verification is often delayed until after retirement. There may, in exceptional cases, be special reasons for this; but, generally speaking, the date of an official's retirement is decided in time

enough to allow Article 988 (b) to be applied, His Honour trusts that the facility thus afforded for the preparation of pension cases will now be more freely utilized, and desires that it be made in future the general rule to undertake the verification of an officer's service prior to his retirement, whatever his status may be. The provisions of Article 988 should be specially brought to the notice of all non-gazetted officials belonging to all offices.

Pension applications. Procedure for preparation of.

THE application in Form No. 15, Civil Service Regulations, should not be prepared till the services of the officer who is about to retire, or who has retired, have been verified by the Audit Officer in the manner laid down in Articles 988 and 989, Civil Service Regulations. When this has been done, the application should be prepared and submitted to the Government, in *duplicate*, through the prescribed channel.

In preparing the formal application, care should be taken that the history of services on page 2 agrees with the verification statement, and that entries 5 to 8 on page 1 correspond with the facts shown on page 2 of the application.

G. O. Nos. 15, dated 30th March, 1881, and 34, dated 16th June, 1881.

The following statement shows the principal points usually neglected in submitting pension cases, and they should be carefully attended to :—

- 1.—Show in detail the dates, months, and years of applicant's various appointments, promotions, &c., on the 2nd page of the application.
- 2.—Enter the date of applicant's birth by the Christian era under column 15 on the first page of the application.—[Article 988 (a) 1.]
- 3.—Explain cause of suspension and of the break in applicant's service and furnish attested copy of the order reinstating him in his post.—[Article 988 (a) 4.]
- 4.—Enter all leaves (other than privilege or casual) taken on the 2nd page of the application, with dates of beginning and ending for each period of leave, or certify that no leave was ever taken.—[Article 988 (a) 3 and Article 991 (a).]
- 5.—State under column 10, on the 2nd page of the application, how the service has been verified.
- 6.—If not discharged, furnish a certificate to the effect that the applicant is likely within six months to retire from the public service.—[Article 988 (b).]
- 7.—Furnish a last pay certificate as required by Article 990.
- 8.—Submit service-book of the applicant as required by Article 988 (a).
- 9.—Opposite the 4th entry on the 3rd page of the application state for what reason it has been found impossible to provide suitable employment for the applicant.—[Article 469.]
- 10.—Against the 5th entry on the 3rd page specify the particulars of the savings effected.—[Article 471.]
- 11.—State against entry No. 6 on the 3rd page whether the service claimed is considered to be established and should be admitted or not.—[Article 991 (b).]
- 12.—Send a medical certificate as to the incapacity of the applicant for further service.—[Articles 486 and 991 (c).]
- 13.—Certify to the incapacity of the applicant opposite the 5th entry on the 3rd page of the application.—[Article 992.] If he is retiring at his option under Article 988, state so.

14.—Send an abstract of all parwanas of appointment which are relied upon for verification of the service claimed, properly attested by a responsible officer.

15.—State whether the applicant accepted any post in non-qualifying service of his own accord, or if his services were transferred in the interests of the public service by his superior officer.

16.—State whether the applicant was ever employed in the process-serving establishment, or whether, prior to June, 1861, he was attached to the establishment of a Munsif or other sub-judicial officer, or that of a Judge of

17.—The unattested service must be proved, by the statement in writing of the applicant and by such collateral evidence as may be procurable, in the manner laid down in Article 989 (e).

Pension and leave certificates. Transmission to the India Office of—

WITH a view to obviating delay and personal inconvenience to officers who have proceeded to Europe on leave or have retired from the service, the Government of India have been pleased to rule, with the sanction of the Secretary of State, that the certificates referred to in Articles 962, 963, 965-A, 1018, and 1047 of the Civil Service Regulations shall in future be forwarded by all Accountants-General and other Audit Officers direct to the India Office in all cases in which neither comment nor remark is required; and that the reports referred to in Article 1011-A shall be sent direct by the Local Governments by which the pensions are sanctioned.

Pensions of certain revenue subordinates. Sanctioning by Commissioners.

G.G.O. (F. & C.)
No. 5453 P., dated
the 27th October,
1900.

THE Government of India, Finance and Commerce Department, have sanctioned the delegation to Commissioners of Divisions in these Provinces of the power to grant pensions to non-gazetted revenue subordinates, drawing a salary of Rs. 20 a month and less, in cases where the claims are certified by the Accountant-General to be admissible under the strict letter of the Regulations.

The following classes of cases, however, will still continue to be submitted for the orders of Government in the usual course after report by the Accountant-General, *e. g.*, cases in which—

- (a) any portion of the service cannot be clearly proved from official records;
- (b) breaks in or deficiency of service are to be condoned;
- (c) the date of birth as entered in the service-book is contested;
- (d) inadmissible leave is to be commuted.

Pension. Extraordinary—

IN future when the Local Government decides that an extraordinary pension should be given, or referred if necessary to the Government of India for orders, a report upon the claim for pension should invariably be obtained from the Accountant-General as required by Article 994 of the Civil Service Regulations.

G. G. O. (F. & C.)
No. 394, dated 25th
March, 1901.

Pension. Re-employment to qualify for.

• THE system of re-employing men to make up their time for pension is a bad one, and is not permitted without special grounds. The necessity can best be obviated by ascertaining before discharge that the full period has been served.

G.O. No. 644, dated
12th April, 1880.

Pensioners. Re-employment of—

G.O. No. 5744/X
—155, dated 24th
September, 1888.

THE provisions of Articles 569, 573 and 574 of the Civil Service Regulations apply to re-employment in any Government or Local Funds post, whether pensionable or not.

Promise of pension on dismissal prohibited.

CASES have been brought to the notice of the Government of India in which the prospect of pension or gratuity has been held out to officers removed or required to retire from the service of Government on account of misconduct or inefficiency. Under Article 385 of the Civil Service Regulations such officers are not entitled to any pension or gratuity; and direct or indirect promise of pension or gratuity must not be made to such officers when they are discharged or required to retire from the service of Government.

Pensions to Government officials dismissed from Local Fund employment.

THE following extract from a despatch from Her Majesty's Secretary of State for India, No. 227 (Financial), dated the 19th December, 1895, relates to the grant of pensions in the cases of officers transferred to appointments paid from Local Funds and subsequently dismissed.

G.G.O. (F. & C.)
No. 819 P., dated
the 19th February,
1896.

"I have considered in Council Your Excellency's letter of the 6th of November, No. 321, in which, with reference to the case of * * * the question is raised whether a servant of the Government, compulsorily transferred to an appointment paid by a Local Fund, and subsequently dismissed therefrom, should be granted any pension or gratuity in respect of the pensionable service which he rendered while in the employment of the Government.

"There is no appeal from the action of the President of the Local Board in such a case, and therefore a servant of the Board, when dismissed, loses all claim to pension in respect of the service paid from the Local Fund. It seems hard, however, that the decision of such an authority, which may have been formed hastily or from imperfect information, should operate to prevent the dismissed servant from receiving any allowance of a pensionary character in respect of approved service rendered by him to the Government.

"It appears to me that such a case should be considered as if the servant of the Government had been removed without transfer to a permanent position. He should not have any claim to pension or gratuity, except in so far as the Government may be disposed to award it; but if, with such information as is accessible regarding his service under the Government and subsequently under the Local Fund authority, there is reason to think that the man deserves some compassionate allowance, it should be open to the Local Government to award such an amount as it thinks fit, not exceeding that which could have been granted as a compensation pension on the termination of the service under the Government. Probably it is desirable that the allowance should be rather less than the maximum compensation pension admissible under rule, in order to mark the compassionate nature of the grant; but this is a matter which may be left to the discretion of the Local Government on each occasion.

Pensionable posts: Kanungo Inspectors and Patwari School Teachers.

G.O. Nos. 1402/X
—P. 101, dated 18th
March, 1898; 4631 X
—P. 206, dated 20th
June, 1897; and 1116/
X—P. 101, dated
18th February, 1897.

ALL Kanungos and Kanungo Inspectors whose salaries are charged to the Patwari Funds constituted under Act IX of 1889. have been declared entitled to receive pensions, the pensionary charges, when necessary, being shared between Provincial Revenues and the Patwari Funds according to the rule of proportions.

The service of Patwari School Teachers appointed under the rules issued with G.O. Nos. 1042-43, dated the 5th May, 1883, has also been declared to qualify for pension, and is to be dealt with in the same manner as the service of kanungos, both as regards the time when they were paid from Provincial Revenues, and also after the reconstitution of the Patwari Fund.

Assistant Record-keeper of patwaris' records.

G.O. No. 48/X—
B. 370, dated the
3rd January, 1896. THE post of Assistant Record-keeper of patwaris' records has been declared to be pensionable.

Non-pensionable posts.

G.O. No. 1441/X
—H-47, dated the
4th April, 1902. THE following classes of officers do not qualify for pension :—

- (a) Copyists (including Head Copyists), Arrangers, and Weeders in Record Fund establishments.
- (b) Sale Clerks.
- (c) Kyrk Amins.
- (d) Traffic Registration employes.

For all other purposes, however, service in these posts should be treated as permanent, unless in any case where the appointment is made for a definite temporary period.

G. O. No. 1530/
X—P. 29 dated the
10th March, 1892. (e) Public Vaccinators appointed by municipal boards.

Service of Head Malis declared to be inferior service.

G. G. O. (R. & A.)
No. 1018-42-2, dated
25th May, 1899. THE Government of India have decided that the duties of a head mali are those of an inferior servant, even though they may involve the responsible work performed by the Head Mali of the Government Horticultural Gardens at Lucknow.

Medical boards for invalid pensions.

G. Os. Nos. 6047/
X—15, dated 18th
December, 1894 and
3456/X—15, dated
16th August, 1901. THE following rules have been made under clause (d), Article 486 of the Civil Service Regulations, for the constitution and guidance of Medical Boards assembled to consider all cases of applicants for invalid pension whose age is below 60 years :—

1.—An invaliding Medical Board will be constituted at the head-quarters of each of the following divisions for all cases occurring in those divisions (except as provided in rule 8), namely at Meerut, Bareilly, Agra, Allahabad, Benares, Lucknow, and Fyzabad, and at Naini Tal for the Kumaun Division during the summer months.

2.—A board shall consist of at least three members, and shall comprise the Civil Surgeon of the headquarters district, the Superintendent of the Central Prison, where there is one, and one or more officers of the Military Medical Department to be detailed for duty by the Principal Medical Officer of the Circle: Provided that, when three Medical Officers are not available, two Medical Officers shall form the board and the medical proceedings, in such cases, shall be countersigned by the Inspector-General of Civil Hospitals.

3.—The meetings of the Medical Board shall be held on the second Monday of each month.

4.—When so directed by the head of his office, an applicant for invalid pension or gratuity shall appear before the Civil Surgeon of the district in which he is serving with

A complete and accurate nominal-roll in duplicate in the prescribed form prepared by the head of his office. The Civil Surgeon shall prepare a medical certificate and statement of the case in accordance with Articles 487 and 491 of the Civil Service Regulations and shall send the papers (nominal-roll, medical certificate, and statement of case) to the head of the office concerned. The head of the office shall then forward the above-mentioned papers to the Civil Surgeon of the head-quarters district prescribed in this behalf by rules 1 and 8, so as to reach that officer not later than the end of the month preceding that in which it is proposed that the applicant should appear before the Board. On the Civil Surgeon of the headquarters district intimating the hour and place of meeting of the invaliding Board, the head of the office shall direct the applicant for pension or gratuity to appear at the place and time prescribed.

5.—At the close of each month, the Civil Surgeon of the headquarters district will arrange for the convening of the next Board, applying to the Principal Medical Officer of the circle for the services of such officers of the Military Medical Department as may be required.

6.—The Civil Surgeon of the headquarters district shall, after the meeting of the Board, return the original copy of the nominal-roll and the medical certificate with the Board's proceedings and statement of case to the head of the office concerned, the duplicate copy of the nominal-roll being retained for record in the Civil Surgeon's office.

7.—Travelling allowance may be drawn in all cases in which the pension is applied for under the direction of the applicant's official superior on the ground of the applicant's incapacity for work and in the interests of the public service. The bill should be supported by a certificate that the applicant was directed in the interests of the public service to apply for invalid pension, and that he did not voluntarily apply to retire. When the applicant voluntarily applies for pension, and his circumstances are such as to justify the grant of travelling allowance, a special recommendation may be made to the Local Government for the concession.

8.—All applicants for invalid pension in the Kumaun Division, except as provided in Rule I, will receive their certificate of incapacity for further service and the statements of their cases from the Civil Surgeon of their own districts. These certificates will be accepted after approval and countersignature by the Inspector-General of Civil Hospitals. All applicants from the districts of Gorakhpur and Basti will appear before the Medical Board at Fyzabad, applicants from the Azamgarh district before the Medical Board at Benares and applicants from the Jhansi district before the Medical Board at Agra.

9.—Exceptional cases arising in any district may also be admitted, and pension granted under the certificate of the Civil Surgeon, countersigned by the Inspector-General of Civil Hospitals, at the discretion of the Government.

Transfer of pensions from one treasury to another.

G. O. No. 907 A.,
dated 25th June,
1874.

UNDER Article 1032 of the Civil Service Regulations the Local Government has delegated to Commissioners the power of sanctioning, without reference to the Government, the transfer of pensions from one treasury to another within the provinces.

Interpretation of the word "treasury" in Articles 1032 and 1033, C. S. R.

THE intention of the rules cited in the margin is that the Local Government and the Accountant-General should have power to transfer the payment of a pension from one district to another, and that the Collector, whose jurisdiction extends to one district only, should have power to make transfers within the district. The powers of the Collector in this respect, as in all others, are subject to the general control of

G. G. O. (F. & C.)
No. 2674 P., dated
22nd May, 1902.

the Local Government. There is no objection to the Accountant-General, when informing a Collector that a pension is to be paid in his district, stating that he thinks that the payment may be made at a named sub-treasury if the Collector sees no objection.

Foreign Service Procedure as to transfers to—.

WHEN the transfer to foreign service of an officer not belonging to one of the services mentioned in Art. 806 (iii), Civil Service Regulations, is contemplated, a preliminary reference should be made to the Accountant-General as to the provisions of the article in question. The Accountant-General, on being furnished with a statement of the service of the officer of the nature detailed in Art. 988 (a), will be prepared to furnish a certificate, stating whether qualifying service for 10 years has or has not been rendered; and such certificate should be appended to every application made to the Government for sanction to a proposed transfer.

Foreign Service Pensionary contributions in—payable by officer himself.

THE Secretary of State has drawn the attention of the Government of India to the use, in correspondence relating to an officer whose services are lent to a Native State, of erroneous expressions implying that contributions towards pension and leave allowances are paid by a Native State or a body financially independent of the Government of India, and not by the officer whose services are transferred to such a State or body. Under Art. 826 of the Civil Service Regulations the officer himself is bound to pay the contribution, and this fact should be borne in mind in all references to the contributions referred to.

Foreign Service. Rate of contribution for officers who are neither "gazetted officers" nor are of clerical standing.

IN the case of officers who, though not gazetted officers in terms of the Resolution G. G. O. (F. & C.) in the Home Department No. 35/1701-1718 (Public), dated 8th No. 2421P., dated November, 1893, are not of clerical standing, cl. (b) (1) of 21st May, 1894. Art. 832, Civil Service Regulations, should be applied to them, and they should pay contribution at the higher rate, whether actually gazetted or not.

Pensioned native soldiers. Civil employment for—.

G. O. No. 4011/X-32, dated 9th August, 1893.

- (1) Peshawar for Pathans.
- (2) Rawalpindi for Panjabi Muhammadans.
- (3) Sialkot and Dharmasala for Dogras.
- (4) Amritsar for Sikhs.
- (5) Delhi for Jats and Hindustani Muhammadans.
- (6) Lucknow for Hindustani Hindus.

WITH reference to cl. 175, India Army Circulars, 1890, it is notified for general information that, from the 1st April, 1893, the officers in charge of the six recruiting districts named in the margin, have been entrusted with the working of the scheme for the employment of native Military pensioners in Civil capacities.

2. All applications by Heads of Departments, Civil and Military officials and the general public for the services of pensioned soldiers, should be made direct to the officer in charge of the district concerned.

3. Lists of men in want of employment similar to those hitherto sent by regiments to the Military Department will be sent, in future, to the district recruiting officer who enlists recruits of the caste of the men concerned. These officers will keep a register of such men, in which the nature of employment which each man desires and is best fitted for, as well as his age, qualifications, and character should be recorded.

Act XXIII of 1871 (THE PENSIONS ACT).

4. When employers in want of men of any particular class apply to the district recruiting officer concerned, they should state their wants fully and the terms offered. District recruiting officers will use every endeavour to select and send only such men as are in all respects suitable.

5. The district recruiting officer concerned will act as a medium between the employers and pensioners, and will afford any information that may be required on either side; but applicants and employers once placed in communication with each other should ordinarily settle all details between themselves.

6. District recruiting officers will furnish to the Adjutant-General annually on 1st April a return showing—

- (i) number of applicants for employment on their rolls;
- (ii) number of men applied for by employers;
- (iii) number of men supplied.

7. District recruiting officers will have power to strike off the roll the name of any man whom they have reason to consider to be in any way unfit for employment.

8. District recruiting officers will have power to enter on the roll the names of any pensioners whom they may consider suitable candidates for employment.

9. Applicants desirous of employment should apply—

- (1) to the officer commanding the regiment to which they belonged, or
- (2) to the district recruiting officer concerned,

giving all the particulars required in the prescribed form of application.

The District Recruiting Officers of the Bengal Command will furnish to any Civil Officers requiring them lists of old soldiers desirous of employment in their districts, showing the qualifications of the men, their character, and the nature of the employment for which they are applicants, and that they will also have the lists corrected from time to time. The District Recruiting Officers of the Bengal Command are stationed as follows:—

- Lucknow, for Brāhmans and Rājputs;
- Delhi, for Jāts and Hindustāni Muhammadans;
- Gorakhpur, for Gorkhas.

These officers, however, so far as the employment of discharged soldiers is concerned, do not confine themselves entirely to the class of men which they enlist, but have in their lists the names of other castes also.

Pensioned native soldiers. Suitable appointments for—.

G. O. No. 7103/
X-1015, dated 19th
November, 1890. THE posts in which pensioned native soldiers might be employed are as under:—

- Chaprāsīs or messengers in Government offices, both civil and military.
- Darwāns and chaukidārs in Government and other offices.
- Pointsmen, gate-keepers, watchmen, &c., on railways.
- Foresters, Forest Guards, poons, &c., in the Forest Department.
- Village and station postmen.
- Warders, &c., in jails.
- Employment as darwāns, chaprāsīs, and in various other capacities by private firms and tradesmen, contractors, planters, mill-owners and others.

Military pensioners. Procedure when—are convicted of offences.

WHEN a military pensioner is convicted and sentenced to imprisonment in a criminal court, the facts of the case should be reported without delay direct to the Controller of Military Accounts of the Circle, in view to action being taken under paragraph 491 of Part II, Volume I, of the Army Regulations for India. The report should contain information regarding the nature and circumstances of the offender's crime and the amount of imprisonment to which he was sentenced.

G.G.O. (H.D.) No. 1 G/1 132—1141, dated 8th July, 1887, and G.O. No. 3826/X—684, dated 23rd July, 1887.

When it is discovered that a convict is a military pensioner without the fact having been made known to the convicting Magistrate, the Superintendent of the jail should report the circumstance to the Magistrate of the district, who will then follow the procedure prescribed above.

Deaths and non-appearance of pensioners.

DISTRICT officers should furnish each officer in charge of a police-station in their districts with a list of pensioners residing within the limits of his jurisdiction, with instructions to report, without delay, the death or disappearance of any pensioner to the Tahsildar, who should take steps to verify the statement and report the matter through the registrar-kanungo.

G.O. No. 26, dated 18th June, 1877, amended by G. O. No. 39, dated 10th July, 1877.

When a treasury officer reports the non-appearance of a pensioner, an enquiry is to be made as to the cause. It is therefore necessary that the nearest relative or friend with whom the pensioner was living should be ascertained, and that such relative or friend should ordinarily be held responsible for reporting the death or disappearance of the pensioner.

APPENDIX II.

Finance Department.

MILITARY.

PAY AND ALLOWANCES.

FUNDS.

Calcutta, the 18th February, 1910.

Indian Military Service Family Pension Regulations.

No. 330, P.—With the approval of the Right Hon'ble the Secretary of State for India, the Governor-General in Council directs the publication, for the information of all concerned, of an amended Appendix to the Indian Military Service Family Pension Regulations.

The 24th February, 1910.

Indian Military Service Family Pension Regulations.

No. 366-P.—The amended Appendix to the Indian Military Service Family Pension Regulations referred to in notification No. 330-P., dated the 18th February, 1910, in the issue of the *Gazette of India*, dated the 19th February, 1910, is published below—

APPENDIX.

Reports and applications under these Regulations should be made:—

1. To the Controller of Military Accounts, Eastern Circle, Lucknow, when the subscriber (except Royal Indian Marine) is drawing pay or pension in India or at a colonial station (including China), where a unit of the Indian Army is stationed.

2. To the Examiner of Marine Accounts, Bombay, in the case of officers of the Royal Indian Marine drawing pay or pension in India.

3. To the Director of Funds, India Office, Whitehall, London, S. W., if the subscriber is drawing his pay or pension elsewhere, or if the subscriber, after receiving in India or at a colonial station in advance the pay for the privilege leave portion of combined leave, proposes to draw his furlough pay elsewhere.

Form (A) of a letter from an Officer with whom it is optional under Regulation 2 to contribute under these regulations, announcing his intention to do so.

SIR,

I have the honour to announce my intention of contributing for pensions for my family under the regulations published with the notification by the Government of India, in the Military Department, No. 1315, dated 28th December, 1872.

I agree to be bound in every respect by the said regulations and by any orders in modification thereof that may be hereafter passed by the Secretary of State for India in Council.

I was born on the

My wife was born on the

We were married on the

A certified copy of the register of our marriage is herewith transmitted.

The names and birthdays of my children are as follows :—

Form (B) of a letter from an Officer, reporting his having joined the service of the Government of India, married. (See Regulation 14).

SIR,

With reference to the Family Pension Regulations published with the notification by the Government of India, in the Military Department, No. 1315, dated 28th December, 1872, I have the honour to report that I was admitted to the service of the Government of India, married, on the 19 .

I was born on the

My wife was born on the

We were married on the

A certified copy of the register of our marriage is herewith submitted.

The names and birthdays of my children are as follows :—

Form (C) of a letter reporting marriage. (See Regulation 14).

SIR,

I have the honour to report my marriage on the 19 , to Miss .

A certified copy of the register of our marriage is herewith transmitted.

I was born on the

My wife was born on the

I wish to pay the donation for which I have become liable in $\frac{\text{one sum}}{12 \text{ monthly}}$ instalments including interest.

Form (D) of a letter reporting the birth of a child. (See Regulations 14 and 15).

SIR,

I have the honour to report the birth to me of a male (female) child on the , and I request that the name may be entered in the pension register kept under the Military Family Pension Regulations.

I wish to pay the donations for which I have become liable in one sum [•]
instalments including interest. 12 monthly

Form (E)—Report of death. (See Regulation 14).

SIR,

I have the honour to report the decease on the _____ of my son
(daughter) born on the _____ (or of wife).

Form (F) of application for the commuted value of the Pension of a male
orphan over 16 years of age. (See Regulation 21).

SIR,

I, A. B., being the mother (or guardian) of C.D., son of E. F., late a
_____ in the service of the Government of India, having now an opportu-
nity of placing my son (or ward) in a suitable position, request that the commuted
value of the remaining portion of his pension may be granted to me under my guaran-
tee for its proper application to his use.

The age of my son (or ward) is now _____ years _____ months, and I submit
herewith a certificate of his health.

Form (G)—Medical certificate to be furnished by mother or guardian applying
, , for commutation of a Male Orphan's Annuity. (See Regulation 21).

We do hereby certify that we have carefully and personally examined into the
state of the health of C.D., son of the late E. F., and that we consider him free from
any disease likely to prevent his attaining the age of 21 years.

(Sd.) G. H., M.D.

„ I. K., „

Form (H)—Mother's or Guardian's Receipt for Commuted Value of a Male
, Orphan's Annuity. (See Regulation 21).

I, A. B., mother (or guardian) of C. D., son of the late E. F., in consideration of
the payment to me of the sum of _____ being the commuted value
of the pension receivable by the said C. D. from _____ till he
attains the age of 21 years, do hereby bind myself to account, if called on by the
Secretary of State for India, for the due application of the said sum for the use and
benefit of the C. D.

THE PENSIONS ACT, 1871.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in *Italics* preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S. in Brevier Roman denotes the section.

A

Abkari revenue, Suit for recovery of, governed by Pensions Act, **Q**, **5**.
under grant from peshwa, **Q**, **20**.

Act, Nature of Pensions, **D**, **3**, **4**.

The Pensions, application of, **K**, **4**.

Yaumia allowance—Pensions, not applicable to, **L**, **4**.

Matang service Inam—Pensions, not applicable to, **M**, **4**.

Suit by assignee of Pension under the Pensions, **O**, **P**, **5**.

Suit for recovery of *abkari* revenue, governed by Pensions, **Q**, **5**.

Suit for a declaration of plaintiff's right to officiate as *patil* not prohibited by Pensions, **R**, **5**.

Suit to recover cash allowance from *inamdars*, by trustees of idol, falling within Pensions, **S**, **5**.

When grant of villages may not fall under Pensions,—*Sanad*, construction of—ownership in soil—When grant of villages may not fall under Pensions, **A—K**, **6**.

Application of Pensions, Lands held free from assessment—Grant of land revenue—Distinction, **T—X**, **5**.

Pensions, C.P.C., S. 43—"The whole claim in," **Y**, **6**.

Places where Pensions, has been declared to be in force, **P—S**, **7**.

Pensions, applies to Oudh *wasikas*, **T**, **7**.

Construction of Pensions—"Includes," scope of the term, **N**, **10**.

Pensions, Ordinary rules—Jurisdiction of Judges—Reg. XXIX of 1827, S. 6, **B**, **12**.

S. 4, Pensions—Bombay Jurisdiction Act, X of 1876, S. 4—Act XI of 1852, effect of attachment under—Release of attachment—Adverse nature of possession by Collector subsequent to Reg. XXIX of 1827, S. 6, **H**, **I**, **13**.

Personal grants—Applicability of Pensions, **D**, **15**.

does not apply to endowment for pious or religious purposes, **E**, **15**.

Pensions,—Suits relating to grants of Land Revenue, **D**, **22**.

Ss 3, 4, Pensions, *Malikana* dues payable by Government, suit relating to—Certificate under the Act necessary, **O**, **25**.

Adverse possession, Reg. XXIX of 1827, S. 6—Act XXIII of 1871, S. 4—Bombay Jurisdiction Act X of 1876, S. 4—Act XI of 1852, effect of attachment under—Release of attachment—Adverse nature of possession by Collector subsequent to, **H**, **I**, **13**.

Agent for Sardars, Jurisdiction of—S. 4 of Act XXIII of 1871 **A**, **12**.

Agreement, between Government and public servant—Increase of pay for risky service—Payment during good behaviour, meaning of—Payment on termination of service, if pension—Suit to enforce agreement, if maintainable, **I**, **16**.
by Government to pay from treasury, **B.C.** **21**, **22**.

Allowance, under Bombay Act XI of 1843 whether, can be attached, **G**, **37**.
as compensation for loss—Attachment, **M**, **37**.

Attungah grant, and *istumrari* property, *N*, 20.

Ambalam, Suit to recover lands forming the emoluments of office of, *N*, 14.

Assignee, Suit by, of pension under the Pensions Act, *O*, 5.

Assignments, etc., in anticipation of pension, to be void, *S.12*, 38.

of pension in lieu of dower void, *T*, 38.

of pension made before the Pension Act—Effect, *U*, 38.

Grant made as compensation for abolition of office hereditary in plaintiff's family assignable, *Z*, 39.

Attachment, Act XI of 1852, effect of, under—Release of,—Adverse nature of possession by Collector subsequent to—Reg. XXIX of 1827, *S. 6*—Act XXIII of 1871, *S.4*—Bombay Jurisdiction Act (X of 1876), *S. 4*, *H, I*, 13.

"under money-decree," not a suit prior to the Act for purposes of *S. 1* of this Act, *J*, 19.

Exemption of pension from, *S. 11*, 33.

Certain stipends etc., not liable to, *Y*, 35.

Stipends allowed to Mysore Princes cannot be attached, *C*, 36.

Pay of carnatic stipendary not liable to, *D*, 36.

Bonus from Government, *E*, 36.

Pension—Land revenue granted by Government on political considerations—Water advantage rate—Liability to, in execution of a decree—Decree, construction of, *Z*, 36.

Arrears of *yeomiah* pension not subject to, *F*, 37.

Allowance under Bombay Act XI of 1843 whether, can be attached, *G*, 37.

Funds representing political pensions due at date of pensioner's death not liable to, *H, I*, 37.

Tora garas hak, whether exempt from attachment as pension, *I*, 37.

Allowance as compensation for loss, *M*, 37.

Arrears of pensions due, *N*, 37.

Babuana allowance can be attached, *O*, 37.

Decree in Civil Court—Unenfranchised inam—Sale in execution, *P, Q*, 38.

Definition of political pension—Property granted in lieu of cash political pension, whether can be attached in execution of decree, *R*, 38.

Decree specifically passed against *Jaghir* income, *V*, 39.

Babuana allowance, can be attached, *O*, 37.

Bar, of suits relating to pensions, *S. 4*, 10.

Bengal, Notification dated 7th September, 1875—Rules under *S. 14* of this Act, 40.

Bombay, Notification No. 6849, dated 23rd December, 1879, 23, 24, 31, 32, 47, 51.

Bombay Act XI of 1843, Allowance under Bombay Act XI of 1843 whether, can be attached, *G*, 37.

Bombay Jurisdiction Act (X of 1876), *S. 4*—Act XI of 1852, effect of attachment under—Release of attachment—Adverse nature of possession by Collector subsequent to, Reg. XXIX of 1827, *S. 6*—Act XXIII of 1871 (Pensions) *S. 4*, *H, I*, 13.

Bonus, from Government—Attachment, *E*, 36.

C

Cancellation, Subsequent, of Collector's certificate—Effect, *O*, 28.

Carnatic stipendary, Pay of, not liable to attachment, *D*, 36.

Cash allowance, Suit to recover, from *inamdar*, by trustee of idol, failing within Pensions Act, *S*, 8.

allowed to worship of idol—Personal grant, *G, H*, 13.

Suit for, payable by *Inamdar*, *Q*, 26.

Certificate, Suit re grant of land revenue, etc., —Certificate, *W*, 11.

Form, *N*, 25.

of Collector not forthcoming—Procedure—Mortgage of right—Suit for foreclosure, *P*, 25.

from Collector—Suit based on agreement to receive maintenance out of cash allowance—Suit relating to a pension or grant of money, *R*, *S*, 26.

Collector's certificate—Jurisdiction of Civil Courts—Pensions Act (XXIII of 1871), Ss. 4, 5, 6, *C*, *D*, 27.

Collector's, not obtained when suit was filed—Effect, *E*—*H*, 27.

Collector's order referring the parties to Civil Court—Certificate produced in the Court of appeal—Sanad—Construction—Grant of the soil of a village, *J*, *K*, 28.

Omission to obtain previously to suit—Certificates enabling Court to entertain suit—Effect of certificate granted after the hearing, *L*, 28.

not obtained when suit filed—Certificate not produced at hearing—Procedure—Practice, *M*, 28.

Presumption—Revocation, *N*, 28.

Subsequent cancellation of Collector's,—Effect, *O*, 28.

Decree obtained without Collector's—Void, *P*, 28.

Collector—Civil Court—Suit to recover share of allowance for particular years—Certificate referring to some years, *Q*, 29.

Omission in,—Effect, *R*, 29.

Collector's, not necessary, when, *S*—*X*, 29.

Toda giras hak—The *Hak* entered in the name of a person—Arrears of the *Hak* falling due in the person's lifetime—Application to receive payment of the arrears by the person's heirs after his death—Collector, *T*, 34, 35.

Rule 6 framed under the Act—Suit for recovery of *Varshusan* allowance—Collector's certificate—Cancellation of certificate by Revenue Commissioner, *B*, 40.

Ceylon Government, Government of India acting as agent to,—Effect, *B*, 36.

Chief Controlling Revenue Authority, Power to make rules, *S*, 14, 39.

Power of, *A*, 40.

Civil Court, —'s jurisdiction—*Deshmuks*, *C*, 12.

Forest Settlement Officer, *Y*, 12.

Jurisdiction of,—Claim against Government for money in lieu of *tora giras haks* *F*, 12, 13.

Jurisdiction of,—“Grant of money or land revenue” suit as to, *H*—*I*, 18, 19.

empowered to take cognizance of such claims, *S*, 6, 24.

Collector's certificate—Jurisdiction of Civil Courts, *C*, *D*, 27.

Collector—Certificate—Suit to recover share of allowance for particular years—Certificate referring only to some years, *Q*, 29.

Civil Procedure Code, *S*. 43—“The whole claim”, *Y*, 6.

S. 266—Zemindari granted as reward for services rendered to Government, *V*, *W*, 21.

Clim, *Suits* relating to lands held under Government grant—Nature of claim and title, determination of, *L*, *M*, 7.

against Government for money in lieu of *tora giras haks*—Jurisdiction of Civil Courts, *F*, 12, 13.

for maintenance by a female member—Government pension, *A*, 21.

to be made to Collector or other authorised officer, *S*, 5, 22.

Civil Court empowered to take cognizance of such claims, *S*, 6, 24.

to share in right to collect *masi* dues, *V*, 26.

Collector's certificate, Mortgage of *hak*, sale of property in execution of decree on—
Absence of, to mortgages under S. 6 of this Act effect of, on purchaser's title,
S, 17.

Commutation, of pensions, S. 10, 33.

Construction, of Act XXIII of 1871,—rule as to, E—J, 4.

of Act—"Includes," scope of the term, N, 10.

of document—Pension—Definition—Grant of village upon payment of a quit
rent, Z, 21.

Jaghir—Succession—Grant of Government revenue for life to parties family in
specific shares—Death of one sharer—Suit by the surviving sharer against the
son of the deceased for certain instalments wrongfully enjoyed by the latter
—Construction of such grant, Z, 27.

Certificate—Collector's order referring the parties to Civil Court—Certificate
produced in the Court of Appeal—*Sanad*—Construction—Grant of the soil of a
village, J, K, 23.

of *Sanad*,—Ownership in soil—When grant of villages may not fall under Pensions
Act, A—K, 6.

D

Decree, Pension—Land Revenue granted by Government on political considerations—
Water advantage rate—Liability to attachment in execution of a decree—
Decree, construction of, Z, 36.

specifically passed against *Jaghir* income—Attachment, V, 39.

Desaigiri hak, Sale, M, 14.

See—, 9 B, 285, R, S, 17.

Deshmukhs, Civil Court's jurisdiction, C, 12.

Jurisdiction, Suit *re*, Q, R, 17.

Deshmuk allowance, Hereditary, 2 B, 99 (P.C), P, 17.

E

Endowment, granted by Government, suit in respect of, D, 12.

Act does not apply to endowments for pious or religious purpose, E, 15.

Execution of a decree, Pension—Land revenue granted by Government on Political
considerations—Water advantage rate—Liability to attachment in execution
of a decree—Decree, construction of, Z, 36.

Execution proceedings, Suit in S. 4 not including, L, 14.

F

Foreclosure, Suit for,—Certificate of Collector not forthcoming—Procedure—Mortgage
of right, P, 25.

Forest income, Suit for a percentage of, Y-1, Z, 12.

Forest Settlement Officer, is Civil Court, Y, 12.

G

Grant, Lands held free from assessment—of land revenue—Distinction—Application of
this Act, T—X, 5.

When—of villages may not fall under Pensions Act—*Sanad*, construction of—
Ownership in soil, A—K, 6.

Suits relating to lands held under Government—Nature of claim and title, de-
termination of, L—O, 7.

by Government of right to receive land revenue for service rendered, Y, 15.

of villages enabling grantees to receive the land revenues, K, 19.

Abkari revenue under—from Peshwa, Q, 20.

of land made to the family of a servant, X, Y, 21.

INDEX,

Grant—(Concluded).

of share of Jagir by Government, *Y*, 27.

Pensions for lands held under, in perpetuity, *S*, 7, 30.

*Certain grants—Their nature, *O—R*, 34.

made as compensation for abolition of office hereditary in plaintiff's family assignable, *Z*, 39.

Grant of money or land revenue, Meaning of, *S*, 3, 8.

Reg. IV of 1881 (Madras), *W—Y*, 8.

Meaning, *Z—C*, 8, 9.

Examples, *D*, *E*, 9.

Bar of suits, *re*, *S*, 4, 10.

Suit,—Certificate, *W*, 11.

suit as to—Jurisdiction of Civil Courts, *H—I*, 18, 19.

Attachment under money-decree, not a suit prior to the Act for purpose of *S*, 1, *J*, 19.

Suits relating to,—Pensions Act, *D*, 22.

I

Idol, Cash allowance to worship of,—Personal grant, *G*, *H*, 16.

Inam, confirming by Government of an,—Effect, *R*, 14.

Suit by grantees to contest right of Government to resume, *T*, 14.

lands and *Mokasa amals*, *O*, *P*, 20.

Inamdar, Suit for cash allowance payable by, *Q*, 26.

Informers, Reward to, *S*, 13, 39.

Insolvent, Order directing, to pay every month a portion of the pension money to the receiver, validity of, *M*, 17.

J

Jaghir, Resumption of,—Suit to recover arrears, *G*, 13.

Question as to person on whom, is to be granted, *K*, 14.

Suit for money payment substituted for, *S*, 14.

income in a village, *O*, 17.

Grant of *hak haisyat* water-rate advantage rent in, village, *O*, 17.

Money grant on a resumption of—, *L*, 19.

Suit for share of rent on a, *M*, 20.

Suit for share of rent on a, *F*, 23.

Substitution of money payment for, *T*, 26.

Grant of a share of, by Government, *Y*, 27.

Succession—Grant of Government revenue for life to parties family in specific shares—Death of one co-sharer—Suit by the surviving sharer against the son of the deceased for certain instalments wrongfully enjoyed by the latter—Construction of such grant, *Z*, 27.

Jagir income, Pension, *S*, 34.

Decree specifically passed against,—Attachment, *V*, 39.

Jurisdiction, of Agent for Sirdars, *A*, 12.

of Judges—Reg. XXIX of 1827, *S*, 6—Ordinary rules, *B*, 12.

Civil Court's,—*Deshmukhs*, *C*, 12.

of Civil Court's, *re*—Claim against Government for money in lieu of *toda giras haks*, *F*, 12, 13.

Deshmukh—Suit *re*, *Q*, *R*, 17.

of Civil Courts—"Grant of money or land revenue—Suit as to, *H—I*, 18, 19.

of Civil Courts—Collector's certificate, *C*, *D*, 27.

K

Kazi, Kazi's Office—Rozina allowance—Its liability to attachment and sale in execution of a decree, Y, 30.

L

Lands, held free from assessment—Grant of land revenue—Distinction—Application of Pensions Act, T—X, 5.

Suits relating to—held under Government grant—Nature of claim and title, determination, L—O' 7.

Suits to recover, exempt from revenue, W, 15.

Pensions for, held under grant in perpetuity, S. 7, 30.

Land revenue, Grant of,—Laws held free from assessment—Distinction—Application of Pensions Act, XXIII of 1871, T—X, 5.

M

Mafidar, Suit by recorded, of one field for produce of another field, R—U, 20.

Mafiducs, Pensions Act—Claim to share in right to collect, V, 26.

Maintenance, Suit for, allowance by a widow, D, 18.

Claim for, by a female member—Government pension, A, 21.

Malikana, dues payable by Government, suit relating to—Certificate under the Act necessary, O, 25.

Suit for, payable by Government, W, 26.

allowance, T—V, 17.

Matam Service Inam, Pensions Act not applicable to, M, 4.

Memorandum, by Mr. F. Millett on pensions and charitable or other allowance, dated 12th May 1845, Appendix C, 45—47.

Military, Pay and allowances rules re, 67—69.

Millett, Memorandum by Mr. F. Millett on pensions and charitable and other allowances, dated 12th May 1845, Appendix C, 45—47.

Mokasa Amals, Inam lands and, O, P, 20.

Mortgage, of hak, sale of property in execution of decree on—Absence of Collector's certificate, S, 17.

Mortgage of right, Suit for foreclosure—Certificate of Collector not forthcoming—Procedure, P, 25.

Mysore Princes, Stipends allowed to, cannot be attached, C, 36.

O

Oudh Wasikas, Pensions Act applies to, T, 7.

not retrospective, U, V, 7.

P

Patil, Suit for a declaration of plaintiff's right to officiate as—will be prohibited by Pensions Act, S. 5.

Pay, of Carnatic stipendary, not liable to attachment, D, 36.

Pension, Suit by assignee of—under the Pensions Act, O, 5.

Bar of suits relating to—, S. 4, 10.

not defined, A, 15.

Definition—Grant of village upon payment of quit rent—Construction of document, B, C, 15.

Agreement between Government and public servant—Increase of pay for risky service—Payment during good behaviour, meaning of—Payment on termination of service, 'if,—Suit to enforce agreement, 'if maintainable, I, 16.

Wasika allowance whether a, or not, J, 16.

money after the payment to the pensioner, character of, K, L, 16.

Pension—(Concluded).

Order directing insolvent to pay every month a portion of the pension money to the receiver, validity of, *M*, 17.

Liability of pensioner to account to the receiver for the money received as, *N*, 17.

Claim for maintenance by a female member—Government pension, *A*, 21.

Definition—Grant of village upon payment of a quit rent—Construction of document, *Z*, 21.

Claims to be made to Collector or other authorised officer, *S*, 5, 22.

Suit relating to a, or grant of money—Certificate from Collector—Suit based on agreement to receive maintenance out of cash allowance, *R*, *S*, 26.

pensions for lands held under grant in perpetuity, *S*, 7, 30.

Mode of payment, *S*, 8, 31.

Payment to be made by Collector or other authorised officer, *S*, 8, 31.

Payments to be for the year commencing 1st May but may be made in instalments, *S*, 8, 31.

Payments of arrears, *S*, 8, 31.

Alienability of,—Gift of right to pensioner, *B*, 31.

Commutation of, *S*, 10, 33.

Exemption of, from attachment, *S*, 11, 33.

Scope—Meaning, *F*—*N*, 33, 34.

Jagir, *S*, 34.

Saranjam—Resumption—, its impartibility—Hindu Law—Adult son's right to demand maintenance from his father, *U*, *V*, 35.

Land revenue granted by Government on political consideration—Water advantage rate—Liability to attachment in execution of a decree—Decree, construction of, *Z*, 35.

Arrears of Yeomiah pension not subject to attachment, *F*, 37.

Share in Government revenue whether, *K*, 37.

Todd garas hak whether exempt from attachment as, *I*, 37.

Arrears of, due—Attachment, *N*, 37.

Assignment, etc., in anticipation of, to be void, *S*, 12, 38.

Definition of political pension—Property granted in lieu of cash political pension, whether can be attached in execution of decree, *R*, 38.

Assignment of, in lieu of dower, *S*, 38.

Assignment of, made before the Act—Effect, *U*, 38.

Memorandum by Mr. F. Millett on pensions and charitable or other allowances, dated 12th May 1845, Appendix *C*, 45—47.

Pensions and Pensioners, Rules re—United Provinces of Agra and Oudh, Appendix *I*, 55—57.

Perpetuity, Pensions for lands held under grants in, *S*, 7, 30.

Personal grants, Applicability of Pensions Act to, *D*, 15.

Political pension, granted in substitution of land resumed, *O*, 14.

Instances of, *O*, 34.

payable in India but granted by Ceylon Government, *W*, *X*, 35.

Funds representing, due at date of pensioner's death not liable to attachment, *H*, *I*, 37.

Definition of,—Property granted in lieu of cash political pension, whether can be attached in execution of decree, *R*, 38.

of Zamorin of Calicut—'Payable'—Power of disposition by will, *W*—*Y*, 39.

For orders in regard to the pensions in the Province of Agra other than those which are regulated by the Civil Service Regulations, see the BOARD'S EXTENT.

CIRCULAR, No. 2—VI, 54.

Political pensioner, Death of,—Pension remain unpaid—Effect, *A*, 36.

Private pension, can be attached, *J*, 37.

Procedure, Certificate not obtained when suit filed—Certificate not produced at hearing—Procedure—Practice, *M*, 28.

Mortgage of right—Suit for foreclosure—Certificate of Collector not forthcoming, *P*, 35.

R

Reg. XXIX of 1827 (Bombay), S. 6—Pensions Act—Ordinary rules—Jurisdiction of Judges, *B*, 12.

S. 6—Bombay Jurisdiction Act, X of 1876, S. 4—Act XI of 1852, effect of attachment under—Release of attachment—Adverse nature of possession by Collector subsequent to, *H*, *I*, 13.

Reg. IV of 1831 (Madras), Grant of money of land revenue, *W*—*Y*, 8.

Release, of attachment—Adverse nature of possession by Collector subsequent to—*Reg. XXIX of 1827*, S. 6—Bombay Jurisdiction Act, X of 1876, S. 4—Act XI of 1852, effect of attachment under, *H*, *I*, 13.

Repeal, Enactments repealed, S. 2, 3.

Resumption, of Jaghir—Suit to recover arrears, *G*, 13.

Revenue Commissioner, Rule 6 framed under the Act—Suit for recovery of *varshasan* allowance—Collector's certificate—Cancellation of certificate by Revenue Commissioner, *B*, 40.

Reward, to informers, S. 13, 39.

Rozina allowance, Its liability to attachment and sale in execution of a decree—Kazi—Kazi's office, *Y*, 30.

Rules, under S. 5—Bombay—Authorising certain officers of the Salt Department to hear claims and grant certificates—Notn. No. 4247, dated 22nd July 1881, B.G.G., 1881, Pt. I, 397.

Saving of—, S. 2, 8.

Ordinary,—Jurisdiction of Judges—*Reg. XXIX of 1827*, S. 5, *B*, 12.

United Provinces of Agra and Oudh, *K*, 24.

Power to make rules, S. 14, 39.

Bengal—Notification, dated the 7th September 1875 (published in the Calcutta Gazette of 1875, Pt. I, p. 1144)—Rules framed by the Board of Revenue, L.P., with the consent of the Local Government, under S. 14 of the Act, 40—53.

Bombay Notification, No. 6849, dated 23rd December 1879, B.G.G., 1879, Pt. I, p. 1020, 47—54.

in Madras, 54.

in United Provinces of Agra and Oudh, 54.

Central Provinces, 56.

S

Sale, *Desaigiri hak*, *M*, 14.

Sanad, construction of—Ownership in soil—When grant of village may not fall under Pensions Act, *A*—*K*, 6.

Saranjam, Pensions granted in resumption of, *U*, 26.

Resumption—Pension—Impartibility—Hindu Law—Adult son's right to demand maintenance from his father, *U*, *V*, 35.

Saranjam-lands, Right of management, *X*, 15.

Schedule, 56—58.

Share, in allowance paid from the Government Treasury, suit for declaration that plaintiff is entitled to, *N*, 5.

Sirdar, Suit against, *X*, 26.

Stanom, Suit for declaration that a person is entitled to, *Q*, 14.

Suit relating to management of, *Z*, 15.

Stipends, Certain, etc., not liable to attachment, *Y*, 35.

allowed to Mysore Princes cannot be attached, *C*, 36.

Succession, Jagir—Grant of Government revenue for life to parties' family in specific shares—Death of one co-sharer—Suit by the surviving sharer against the son of the deceased for certain instalments wrongfully enjoyed by the latter—Construction of such grant, *Z*, 27.

Suits, Bar of, relating to pensions, *S*, 4, 10.

to recover arrears—*Toda giras-hak*—Discontinuance of payment by Government, *Y*, 11.

re grant of land revenue, etc.—Certificate, *W*, 11.

relating to land held revenue free, *X*, 11.

relating to land held revenue free, *X*, 11.

in respect of endowment granted by Government, *D*, 12.

for a percentage of forest income, *Y-I*, *Z*, 12.

to recover arrears—Resumption of Jaghir, *G*, 13.

Execution proceedings, *L*, 14.

to recover lands forming the emoluments of office of *ambalam*, *N*, 14.

for declaration that a person is entitled to *Stanom*, *Q*, 14.

for money payment substituted for Jaghire, *S*, 14.

by grantees to contest right of Government to resume Inam, *T*, 14.

to recover land exempt from revenue, *W*, 15.

relating to management or *Stanom*, *Z*, 15.

for maintenance allowance by a widow, *D*, 18.

as to grant of money or land revenue—Jurisdiction of Civil Courts—, *E-I*, 18,

19. for share of rent on a Jagiro, *M*, 20.

by recorded *Mafiqar* of one field for produce of another field, *R-U*, 20.

relating to grants of land revenue—Pensions Act, *D*, 22.

for share of rent on a Jaghire, *F*, 22.

Malikan dues payable by Government,—relating to—Certificate under the Act necessary, *O*, 25.

for foreclosure—Certificate of Collector not forthcoming—Procedure—Mortgage of right, *P*, 25.

based on agreement to receive maintenance out of cash allowance—Suit relating to a pension or grant of money—Certificate from Collector, *R*, *S*, 26.

for cash allowance payable by inamdar, *Q*, 26.

for *malikana* payable by Government, *W*, 26.

to recover share of allowance for particular years—Certificate referring only to some years Collector—Certificate—Civil Court—, *Q*, 29.

T

Toda garqs haks, Their origin and history—Nature of such haks, *F-J*, 9.

if founded on contract with Government, *K*, 9, 10.

Decree before the date of the Act—Effect, *L*, *M*, 10.

Discontinuance of payment by Government—Suit to recover arrears, *I*, 11.

Agreement by Government to pay money in lieu of, *E*, 12.

Jurisdiction of Civil Courts—Claim against Government for money in lieu of, *F*, 12, 13.

Suit regarding, *A*, *B*, 27.

Nature of, *Q*, 34.

Toda garas haks—(Concluded).

Ss. 6, 8, 11—The *Hak* entered in the name of a person—Arrears of the *Hak* falling due in the person's life time—Application to receive payment of the arrears by the person's heirs after his death—Collector—Certificate, *T*, 34, 35. whether exempt from attachment as pension, *L*, 37.

U

United Provinces of Agra and Oudh, Pensions and Pensioners, rules *re*, Appendix I, 58—67.

V

Varshasan allowance, Rule 6 framed under the Act—Suit for recovery of, —Collector's certificate—Cancellation of certificate by Revenue Commissioner, *B*, 40.

W

Wasika allowance, whether a pension or not, *J*, 16.

Words and phrases, "Grant of money or land revenue"—Meaning of, *S*, 3, 8.

Includes in *S*. 3, *N*, 10.

Construction of Act—"Includes", scope of the term, *N*, 10.

Suit in *S*. 4—Meaning, *L*, 14.

Meaning of "relating to" in *S*. 4, *U*, *V*, 15.

Y

Yaumia allowance, Pensions Act not applicable to, *L*, 4.

granted to mosque, not falling under the Act, *F*, 15.

"Arrears of", pension not subject to attachment, *F*, 37.

Z

Zamrin of Calicut, Political pension of,—"Payable"—Power of disposition by will, *W*—*Y*, 39.

Zemindari, granted as reward for services rendered to Government—*S*. 266 (C.P.C., 1882), *V*, *W*, 21.

THE PROVIDENT FUNDS ACT

(ACT IX OF 1897).

(WITH THE CASE-LAW THEREON)

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'THE PROVIDENT FUNDS ACT, 1897.

TABLE OF CASES DIGESTED IN THIS ACT.

	I.L.R. Bombay Series.	PAGE
29 B 259	Veerchand Nowla v. B B and C I Railway Co	4, 5
	I.L.R. Calcutta Series.	
35 C 641	Seth Manna Lal Parruck v. Gainsford	5, 6
	I.L.R. Madras Series.	
26 M 440	Official Assignee of Madras v. Mary Dalgairns	
	Bombay Law Reporter.	
6 Bom L R 921	Veerchand Nowla v. B B and C I Railway Co	4, 5
	Calcutta Weekly Notes.	
12 C W N 633	... . Seth Manna Lal Parruck v. Gainsford	5, 6

THE PROVIDENT FUNDS ACT, 1897.

(ACT IX OF 1897.)

[Passed on the 11th March, 1897.]

HISTORICAL MEMOIR.

Year.	No.	Name of Act.	How affected.
1897	IX	The Provident Funds Act. ...	Rep. in part, Act XIII of 1898. Amended, Act IV of 1903.

An Act to amend the law relating to Government and other Provident Funds.

WHEREAS it is expedient to amend the law relating to Government and other Provident Funds; It is hereby enacted as follows :—

Title, extent and commencement.

1. (1) This Act may be called the Provident Funds Act, 1897.

(2) It extends to the whole of British India, including * * British Baluchistan; and

(3) It shall come into force at once.

Definitions.

2. In this Act—

(1) "Provident Fund" means a fund in which the subscriptions or deposits of any class or classes of employees are received and held on their individual accounts, and includes any contributions, credited in respect of, and any interest accruing on, such subscriptions or deposits under the rules of the Fund:

(2) "Government Provident Fund" means a Provident Fund constituted by the authority of the Government for any class or classes of its employees:

(3) "Railway Provident Fund" means a Provident Fund constituted by the authority of the Government of India, or of any company which administers a railway or tramway in British India, either under a special Act of Parliament or under contract with the Secretary of State in Council or the Government of India, for any class or classes of the employees on, or in connection with, such railway or tramway: and

(4) "compulsory deposit"¹ means a subscription or deposit which is not repayable on the demand, or at the option, of the subscriber or depositor, and includes any contribution which may have been credited in respect of, and any interest or increment which may have accrued on, such subscription or deposit under the rules of the Fund.

(Notes).

1.--"Compulsory deposit."

(1) The expression "Compulsory deposit" is a term of art.

The expression "Compulsory deposit" is not merely descriptive of the sum deposited, but is a term of art, which by virtue of legislative provision includes that which is not within its natural meaning: for it includes any contribution which may have been credited in respect of and any interest or increment which may have accrued on such subscription or deposit under the rules of the fund. 6 Bom. L.R. 921 = 29 B. 259. A

(2) Deposit of a Railway servant towards the Provident Fund—Service of the Company left.

The deposit which a railway servant makes towards the Provident Fund is compulsory deposit; and it does not cease to be so when he leaves the service of the Company. The deposit when it was made was not repayable on demand, and therefore at that time was a 'Compulsory deposit'; and having once acquired that character with the attendant consequences it continues to retain it. 6 Bom. L.R. 921 = 29 B. 259. B

Payment from Government or Railway Provident Fund on death of subscriber or depositor.

3. (1) When a subscriber to, or depositor in, any Government or Railway Provident Fund dies, and the sum standing to his credit in the books of the Fund does not exceed two thousand rupees, the officer or person whose duty it is to make payment of such sum may pay it as follows:—

- (a) he may pay it to any person entitled to receive it according to the rules of the Fund or, in the absence of any rule of the Fund to the contrary, to any person nominated in writing by the deceased subscriber or depositor to receive it;
- (b) in any case not hereinbefore provided for, he may pay it to any person appearing to him to be entitled to receive it.

(2) The provisions of sub-section (1) shall apply to any such sum which at the commencement of this Act stands to the credit of any subscriber or depositor already deceased.

(3) Nothing in this section shall affect the validity of the rules of any Fund in so far as such rules may provide for the disposal of sums exceeding two thousand rupees.

4. (1) Compulsory deposits in any Government or Railway Provident

Protection to deposits and other sums in certain cases.

Fund shall not be liable to any attachment¹ under any decree or order of a Court of Justice in respect of any debt or liability incurred by a subscriber to, or depositor in, any such Fund, and neither the Official Assignee nor a Receiver appointed under Chapter XX of the Code of Civil Procedure shall be entitled to, or have any claim on any such compulsory deposit.

(2) ² Any sum standing to the credit of any subscriber to, or depositor, in any such Fund at the time of his decease and payable under the rules of the Fund or under this Act, to the widow or the children, or partly to the widow and partly to the children, of the subscriber or depositor, or to such person as may be authorized by law to receive payment on her or their behalf, shall vest in the widow or the children, or partly in the widow and partly in the children as the case may be, free from any debt or other liability incurred by the deceased, or incurred by the widow or by the children, or by any one or more of them, before the death of such subscriber or depositor.

(3) Nothing in sub-section (2) shall apply in the case of any such subscriber or depositor as aforesaid dying before the thirteenth day of March, 1903.

(Notes).

1.—“Compulsory deposits....not be liable to any attachment.”

(1) Compulsory deposit not liable to be attached.

The deposit which a railway servant makes towards the Provident Fund, being the results of contributions made by him, not voluntarily, but under compulsion, is not liable to be attached as a debt under the Civil Procedure Code. 6 Bom. L.R. 921=29 B. 259. **C**

(2) Provident Fund of the Corporation of Calcutta not liable to attachment.

The Provident Fund established by the Corporation of Calcutta to which the provisions of this Act were made applicable by the Local Government Notification, dated 8th July, 1902, is not liable to attachment. 12 C.W.N. 633=35 C. 641. **D**

2.—“Para (2).”

Vesting order made after the Act came into operation—Right of the Official Assignee to the deposit.

The Legislature in enacting this section intended that all right and title of an Official Assignee to the deposits referred to in the section should be determined as from the coming into operation of the Act. The Legislature did not intend that the operation of the section should be limited to cases where the vesting order was made after the coming into operation of the Act. If this had been the intention some such words as, after the commencement of this Act the right, title and interest of an insolvent in compulsory deposits in a Railway Provident Fund shall not vest in the Official Assignee under a vesting order made under S. 7 of the Insolvency Act, would have been used. 26 M. 440. **E**

Protection for any-
thing done in good
faith under this Act.

No suit or other legal proceeding shall lie against any person in respect of anything done or in good faith intended to be done in pursuance of the provisions of this Act.

- 6.** The Governor General in Council may, in his discretion, by notification in the Official Gazette, extend the provisions of this Act to any Provident Fund established for the benefit of its employees by any local authority within the meaning of the Local Authorities Loan Act, 1879.
- Power to extend Act XI of 1879 to other Provident Funds ¹.**

(Note).

1.—“Power to extend....to other Provident Funds.”

Extention of the Act to the Corporation of Calcutta.

In the exercise of the powers vested in the Government under this section, the provisions of the Act were extended to the Provident Fund established by the Corporation of Calcutta by Government Notification dated 8th July, 1902, and published in the Gazette of India on the 12th July, 1902. See 12 C.W.N. 633=35 C. 641, **F**

- 7.** Nothing in section 3 shall apply to money belonging to the estate of any European officer, non-commissioned officer or soldier dying in Her Majesty's service in India, or of any European who at the time of his death was a deserter from such service.
- Saving as to estates of soldiers.**

THE PROVIDENT FUNDS ACT, 1897.

INDEX.

Note, 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in Italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S. in Brevier denotes the Section.

Act, Title, extent and commencement of this, S. 1, 3.

Vesting order after the Provident Funds came into operation—Right of the

Official Assignee to the deposit, *E*, 5.

Protection for anything done in good faith under this, S. 5, 5.

Extension of the, to the Corporation of Calcutta, S. 6, 6.

Attachment, Protection to deposits and other sums in certain cases, S. 4, 4, 5.

Compulsory deposit not liable to be attached, S. 4, 5.

Provident Fund of the Corporation of Calcutta not liable to, *D*, 5.

O.P.C., Ch. XX, Receiver or Official Assignee appointed under, not entitled to compulsory deposit in Government or Railway Provident Fund, S. 4, 4, 5.

Compulsory deposit, Meaning of, S. 2, 3.

The expression, is a term of art, *A*, 4.

Protection to deposits and other sums in certain cases, S. 4, 4, 5.
not liable to be attached, *C*, 5.

Corporation of Calcutta, Extension of the Act to the Corporation of Calcutta, S. 6, 6.

D

Definition, of "compulsory deposit," S. 2, 3.

of "Government Provident Fund," S. 2, 3.

of Provident Fund, S. 2, 3.

of Railway Provident Fund, S. 2, 3.

Deposit, of a Railway servant towards the Provident Fund—Service of the Company left, *B*, 4.

Protection to and other sums in certain cases, S. 4, 4, 5.

Vesting orders made after the Act came into operation—Right of the Official Assignee to the deposit, *E*, 5.

Depositor, Payment from Government or Railway Provident Fund on death of subscriber or, S. 3, 4.

E

European officer, Saving as to estates of, S. 7, 8.

Extension, of this Act to the Corporation of Calcutta, S. 6, 6.

G

Government Provident Fund, Meaning of, S. 2, 3.

Payment from, on death of subscriber or depositor, S. 3, 4.

Compulsory deposits in, not liable to attachment, S. 2, 4, 5.

L

Local Authorities Loan Act, 1879, Powers of Governor-General to extend Act XI of 1879 to other Provident Funds, S. 6, 6.

N

Non-Commissioned Officer, Saving as to estates of, S. 6, 6.

O

Official Assigned, Under C.P.C. not entitled to any claim or compulsory deposit, in any Government or Railway Fund, S. 4, 4, 5.

Vesting order made after the Provident Funds Act came into operation—Right of the, to the deposit, E, 5.

P

Payment, from Government or Railway Provident Fund on death of subscriber or depositor, S. 3, 4.

Powers, of Governor-General to extend Act XI of 1879 to other Provident Funds, S. 6, 6.

Protection, to deposits and other sums in certain cases, S. 4, 4, 5.
for anything done in good faith under this Act, S. 5, 5.

Provident Fund, Meaning of, S. 2, 3.

of the Corporation of Calcutta not liable to attachment, D, 5.

Power of Governor-General to extend Act XI of 1879 to other Provident Funds, S. 6, 6.

R

Railway Provident Fund, Meaning of, S. 2, 3.

Payment from Government or Railway Provident Fund on death of subscriber or depositor, S. 3, 4.

Compulsory deposits in, not liable to attachment, S. 4, 4, 5.

Receiver, Under C. P. C. not entitled to any claim on compulsory deposit in any Government or Railway Fund, S. 4, 4, 5.

S

Saving, as to estates of soldiers, S. 6, 6.

Subscriber, Payment from Government or Railway Provident Fund on death of or depositor, S. 3, 4.

W

Words and phrases, Meaning of, "compulsory deposit," in S. 2, 3.

"Government Provident Fund" in S. 2, 3.

"Provident Fund" in S. 2, 3.

"Railway Provident Fund" in S. 2, 3.

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THE BANKERS' BOOKS EVIDENCE ACT, 1891.

TABLE OF CASES DIGESTED IN THIS ACT.

I.L.R. Calcutta Series.			PAGE
81 C 284 (298)	... Chandi Charan Dhar v. Boistab Charan Dhar	...	5, 8
I.L.R. Madras Series.			
20 M 189 (196)	... Queen-Empress v. Arumugam	...	5, 8
Bombay Law Reporter.			
5 Bom L R 865 (867).	Tricumlal Sakarchand v. Lakhmidas Naronji	...	8
Calcutta Weekly Notes.			
4 C W N 433	... Empress v. Patrick Mcquire	...	6
8 C W N 125	... Chundy Churn Dhur v. Boistab Churn Dhur	...	5
Moore's Indian Appeals.			
5 M I A 432	... Rai Sri Kishen v. Rai Huri Kishen	...	6
English Cases.			
36 Ch D 731	... Arnott v. Hayes	...	8
22 T L R 573	... Asylum v. Handysides	...	6
1 Esp 1	... Cooper v. Marsden	..	6
62 L J Q B 77	... Emmot v. Star Newspaper Co	...	8
90 L R I 249	... Fitzpatrick v. M'Donald	...	9
5 Bing 114	... Furness v. Cope	...	6
14 Ch D 197	... Harding v. Williams	...	6
23 Q BD 1	... Howard v. Beall	...	7
(1896) 1 Q B 574	... Kissam v. Link	...	8
89 L T J 232	... Lister v. Yarley	...	7
35 Ir L T R	... M'Gorman v. Kiernns	...	7
L R 38 Ch D 92 (106)	... Mutter v. Eastern & Midlands Ry Co	...	5, 8
(1892) P 137	... Parnell v. Wood	...	8
71 L T 854	... Perry v. Phosphor Co	...	8
(1898) 1 Ch 1	... Pollock v. Garle	...	7, 8
6 Hd and E 84 (99, 101)	... Rex v. Justice of Staffordshire	...	5, 8
(1895) 2 Q B 669	... South Staffordshire Co v. Elsmith	...	7

THE BANKERS' BOOKS EVIDENCE ACT, 1891. (ACT XVIII OF 1891). ¹

[Passed on the 1st October, 1891.]

HISTORICAL MEMOIR..

Year.	No. of Act.	Name of Act.	How affected.
1891	XVIII	The Bankers' Books Evidence Act, 1891.	Amended Act I of 1893. " XII of 1900.

An Act to amend the law of Evidence with respect to Bankers' Books.

WHEREAS it is expedient to amend the Law of Evidence with respect to Bankers' Books ; It is hereby enacted as follows :—

(Notes).

I.—"Act XVIII of 1891."

(1) **Statement of objects and reasons.**

For ———, see Gazette of India, 1891, Pt. V, p. 24.

A

(2) **Report of the Select Committee.**

For ———, see Gazette of India, 1891, Pt. V, p. 189.

B

(3) **Proceedings in Council.**

For ———, see Gazette of India, 1891, Pt. VI, pp. 15, 25, 117, 135 and 140.

Title, extent and commencement. 1. (1) This Act may be called the Bankers' Books Evidence Act, 1891.

(2) It extends ¹ to the whole of British India ; and

(3) It shall come into force at once.

(Notes).

I.—"Extends."

(1) **Act has been extended.**

The ———, by notification under S. 5 of the Scheduled Districts Act, 1874 (XIV of 1874) to British Baluchistan. See Gazette of India, 1896, Pt. II, p. 1004.

D

(2) **Declared in force.**

It was ———, in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

It has been——in the Sonthal Parganas by S. 8 of the Sonthal Parganas Settlement Regulations (III of 1872) as amended by the Sonthal Parganas Justice and Laws Regulation. 1899 (III of 1899).

E

Definitions. 2. In this Act, unless there is something repugnant in the subject or context,—

[(1) "company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or of the Governor General in Council, or by Royal Charter or Letters Patent;]

(2) "bank" ¹ and "banker" mean—

(a) any company carrying on the business of bankers,

(b) any partnership or individual to whose books the provisions of this Act shall have been extended as herein-after provided,

[(c) any post office savings bank or money order office;]

(3) "bankers' books" ² include ledgers, day-books, cash-books, account-books, and all other books used in the ordinary business of a bank :

(4) "legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration :

(5) "the Court" means the person or persons before whom a legal proceeding is held or taken :

(6) "Judge" means a Judge of a High Court :

(7) "trial" means any hearing before the Court at which evidence is taken ; and

(8) "certified copy" ³ means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry ; that such entry is contained in one of the ordinary books of the bank, and was made in the usual and ordinary course of business ; and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

(Notes).

Legislative changes.

(1) The present definition of "Company" was substituted for the original definition by the Bankers' Books Evidence Act, 1900 (XII of 1900). The original definition ran as follows :—

"Company" means a company registered under any of the enactments relating to Companies from time to time in force in British India, or incorporated by an Act of Parliament or of the Governor General in Council, or by Royal Charter or Letters Patent.

(2) Cl. (c) was added by S. 2 of the Bankers' Books Evidence Act, 1898 (I of 1898).

Ss. 2 & 3] Act XVIII of 1891 (THE BANKERS' BOOKS EVIDENCE ACT). 5

1.—“Bank.”

Meaning of “Bank”—S. 9 of the Bankers' Books Evidence Act, 1879, England.

The word “Bank” is restricted to (1) banks which have made a return to the commissioners of Inland Revenue (such return may be proved by a copy verified by the affidavit of a partner or officer, or producing a newspaper purporting to contain such copy published by the Commissioners); (2) Savings Banks certified under the Acts relating thereto (such certificates may be proved by an office or examined copy of the certificate); and (3) Post Office Savings Banks (proved to be such by the certificate of the Post-Master General or one of his secretaries). See Phipson on Evidence, p. 348. F-G

But by 45 & 46 Vict. C. 72, S. 11, sub-S. 2, the word is extended to include any banking company to which the Companies Act of 1862 to 1890 apply, and which the Registrar of Joint Stock Companies shall have certified to have furnished to him the list and summary with the addition specified by the Act; and where the bank is a company so registered, such certificate must be produced before the evidence can be used. (*Ibid.*) H

2.—“Bankers' books.”

Loan Register.

Quere.—Whether the Loan Register is a Banker's book within the meaning of the Bankers' Books Evidence Act. 31 C. 284=8 C.W.N. 125. I

3.—“Certified Copy.”

Ss. 74, 76, Indian Evidence Act—Loan Register of the Public Debt Office in the Bank of Bengal—Bankers' Books Evidence Acts (XVIII of 1891 and I of 1895).

(a) The Loan Register of the Public Debt Office in the Bank of Bengal is a public document, within the meaning of S. 74, I. E. A. 31 C. 284=8 C. W. N. 125. J

(b) Any person is entitled to inspect the same and to obtain certified copies thereof under S. 76, I. E. A., who can show a *prima facie* case that he has an interest for the protection of which liberty to inspect must be given (20 M. 189, *F.*; *Mutter v. Eastern and Midlands Ry. Co.*, L. R. 38 Ch. D. 92 (106), *R.*; *Rex v. Justice of Staffordshire*, 6 Ad. and E. 84 (99, 101), *cited and followed.* (*Ibid.*) K

3. The Local Government may, from time to time, by notification ¹

Power to extend provisions of Act. in the official Gazette, extend the provisions of this Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account books, namely, a cash-book, a day-book or journal, and a ledger, and may, in like manner, rescind any such notification.

(Note).

1.—“Notification.”

Madras and Bombay.

For notifications by the Government of Bombay extending the Act to the books of Messrs. William Watson and Co. of Bombay and Karachi, see Bom. Govt. Gazette, 1902, Pt. I, p. 1289, and as to Madras, see Mad. R. & O., Vol. I (List). L

6 Act XVIII of 1891 (THE BANKERS' BOOKS EVIDENCE ACT). [Ss. 4 & 5]

4. Subject to the provisions of this Act, a certified copy of any entry in a bankers' book shall, in all legal proceedings, be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions, and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

(Notes).

1.—“Mode of proof of entries in bankers' books.”

(1) Mode of proof—English Act.

The mode of proof is different according to the English Act of 1879.

(2) Banker's Books—Copies and entries &c.—Ss. 3, 4, 5, Bankers' Books Evidence Act, England.

Copies of entries in banker's books—i. e., ledgers, day-books, cash-books, account-books, and all others kept in the ordinary business of the bank (whether for daily use or only occasional reference, *Asylum v. Handysides*, 22 T. L. R. 573)—are receivable in all legal proceedings (for or against any one, *Harding v. Williams*, 14 Ch. D. 197) as *prima facie* evidence of the entries, or of the matters, transactions, and accounts therein recorded, upon proof that (1) the book was, at the time of the entry, one of the ordinary books of the bank; (2) that it is in the custody or control of the bank or of the successor of the bank which made the entry, *Asylum v. Handysides*, *supra*; and (3) that the entry was made in the ordinary course of business [Bankers' Books Evidence Act, 1879, Ss. 3 and 4. Prior to this Act entries in bankers' books could only be proved by calling the clerks who made them. *Cooper v. Marsden*, 1 Esp. 1; in *Furness v. Cope*, 5 Bing. 114, however, *Best, C. J.*, allowed a clerk to prove that a certain party had no balance at the bank by production of a ledger kept by another clerk, remarking that this was sufficient to prove the negative, though it might not have been to prove the affirmative]. See Phipson on Evidence, p. 347 (348).

Such proof may be given by a partner or officer of the bank, and either orally or by affidavit. (S. 4 of the English Act of 1879) (*Ibid.*)

But the copy must be an examined copy, proved orally or on affidavit by some person who has examined it with the original entry. (S. 5 of the English Act of 1879) (*Ibid.*)

(3) Admissibility in evidence of certified copies of entries in books of Banks to which the Act does not apply.

Copies of entries in the books of a Bank which does not come within the definition of a “Company” as given in sub-S. (1) of S. 2 of the Bankers' Books Evidence Act, though certified in accordance with the form prescribed by that Act, are not admissible in evidence under the provisions of that Act. 4 C. W. N. 493.

(4) Production of banker's books—Effect.

The production of banker's books with the entries of the items constituting the demand, kept according to the established custom of *mahajuns* in this country, is not of itself sufficient evidence to establish a claim. 5 M. I. A. 432.

In order to establish such a claim, a strict proof of the debt is required. (*Ibid.*)

Ss. 5 & 6] Act XVIII of 1891 (THE BANKERS' BOOKS EVIDENCE ACT). 7

5. 1 No officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book, the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

(Note).

1.—"Section 5."

Production of original books—S. 5, English Act of 1879.

No banker or officer of a bank is, in any legal proceedings to which the bank is not a party, compellable to produce the bank books, or to appear as a witness to prove their contents, unless by order of a Judge for special cause. See Phipson on Evidence, p. 348. R:

2 On the application of any party ³ to a legal proceeding, the Court or a Judge may order that such party be at liberty to inspect ⁴ and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the preceding section may be made ⁵ either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

(3) The bank may, at any time before the time limited for obedience to any such order as aforesaid, either offer to produce their books at the trial, or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

(Notes).

1.—"Section 6."

Inspection—S. 7, Bankers' Books Evidence Act of 1879, England.

Under S. 7, a Court or Judge may, on the application of any party to a legal proceeding, empower him to inspect and take copies of entries in the accounts either of *parties* (see *Lister v. Varley*, 89 L.T.J. 232) or *Strangers* (provided such entries would have been admissible in evidence prior to the Act, *Howard v. Beall*, 23 Q.B.D. 1.; *South Staffordshire Co. v. Ebbsmith*, (1895), 2 Q.B. 669; *M'Gorman v. Kiernns*, 35 Ir. L. T.R.; but see *Pollock v. Garle*, (1898), 1 Ch. 1, in which the C.A. refused to make such an order in the case of third persons who were neither actual nor constructive parties in the case, *q.g.*, as to the bank

1.—“Section 6”—(Concluded).

balance of a Company in an action against one of its directors for inducing a purchase of its shares by alleged misrepresentation as to such balance). S

And even in the case of Banks in Scotland and Ireland (*Kissam v. Link*, 1896, 1 Q.B. 574), for the purpose of the proceedings (S. 7; see *Parnell v. Wood*, 1892, P. 137; *Fitzpatrick v. McDonald*, 30 L.R.I. 249; *Perry v. Phosphor Co.*, 71 L.T. 854); but not for ulterior purposes, e.g., to support a libel stating that the plaintiff was a man of no means (*Emmot v. Star Newspaper Co.*, 62 L.J.Q.B. 77) (*Ibid.*) T

Such order must, unless otherwise directed, be served upon the bank three clear days (exclusive of Sundays and bank holidays) before it is to be obeyed. (*Ibid.*) U

The Court may make the order *ex parte*, but the power should be exercised with care; it may also be made without any affidavit in support of the application—e.g., where the materiality of the entries appears by the pleadings, but the inspection should be limited to the period covered by the matters in dispute (*Arnott v. Hayes*, 36 Ch.D. 731.) (*Ibid.*) Y

2.—“Para. 1.”

Para. 1—Scope.

This provision is not intended to give a right of discovery against third parties who have nothing to do with the litigation. *Pollock v. Garle*, [1898], 1 Ch. 1. W

3.—“Any party.”

Scope of section.

This section which corresponds with the first part of Bankers' Books Evidence Act, 1879, in England, contemplates any party to a legal proceeding making the application. 5 Bom. L.R. 865 (867). X

4.—“To inspect.”

Right to inspect.

(a) It may be that the Legislature intended to recognize the right to inspect public documents generally for all persons, who can show that they have an interest, for the protection of which it is necessary that liberty to inspect such documents should be given. 20 M. 189 (196) (F.B.); 31 C. 284 (293). Y

(b) In *Mutter v. The Eastern and Midlands Railway Company* (1888), L.R. 38 Ch. D. 92, 106, referred to by the Full Bench in the Madras case, Lord Justice Lindley made the following remarks: “When the right to inspect and take a copy is expressly conferred by Statute, the limit of the right depends on the true construction of the Statute. When the right to inspect and take a copy is not expressly conferred, the extent of such right depends on the interest which the applicant has in what he wants to copy, and what is reasonably necessary for the protection of such interest. The common law right to inspect and take copies of public documents is limited by this principle, as is shown by the judgment in *Rex v. Justice of Staffordshire*, (1837), 6 Ad. and E. 84, 99, 101.” See 31 C. 284 (293). Z

(c) For persons interested “every officer appointed by law to keep orders ought to deem himself a trustee” for the purpose of the production of such documents. *Per Lord Denman, C.J.* in *Rex v. Justice of Staffordshire*, 6 Ad. and E. 89, 101 (*Ibid.*) A

5.—“ An order....be made.”

'Books of bank—Inspection—When notice necessary before Order.

- (a) Where a party desires an order under this section on his own behalf the Court ought to grant it *ex parte*. (*Ibid.*) **B**
- (b) But where he applies against the other party the Court ought not to make the order without notice to that other party. (*Ibid.*) **C**
- (c) Where however the Court is not satisfied that the application is not for the purpose of obtaining inspection beyond what is allowed under the ordinary procedure, the Court ought to refuse the application under this section. (*Ibid.*) **D**

7. (1) The costs of any application to the Court or a Judge under or for the purposes of this Act, and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act, shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

Costs.

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.

(3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself :

Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

THE BANKERS' BOOKS ACT.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in Italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S. in Brevier Roman denotes the section.

A

- Act, Bankers' Books Evidence*—Statement of objects and reasons, **A, 3**.
Do. —Report of the Select Committee, **B, 3**.
Do. —Proceedings in Council, **C, 3**.
Do. —Title, extent and commencement, **S. 1, 3**.
Do. —has been extended, **D, 3**.
Do. —Declared in force, **E, F, 3**.

B

- Bank, Meaning of, S. 2, 4, 5*.
Do. S. 9 of the Bankers' Books Evidence Act, 1879, England, **G, H, 3**.
Case in which officer of not compellable to produce books, **S. 5, 7**.
Admissibility in evidence of certified copies of entries in books of, to which this Act does not apply, **P, 6**.
"Banker's books," Meaning of, **S. 2, 4**.
Mode of proof of entries in, **S. 4, 6**.
Production of,—Effect, **Q, 6**.
Inspection of, by order of Court or Judges, **S. 6, 7, 9**.
Bankers' Books Evidence Act, 1879, England, Ss. 3, 4, 5,—copies of, Entries in account books, etc., **M, O, 6**.
S. 6—Production of original books, **R, 7**.
S. 7—Inspection, **S-V, 7, 8**.
S. 9—Meaning of "Bank", **G, H, 3**.
Bank of Bengal, Ss. 74, 76, Evidence Act—Loan Register of the Public Debt Office in, **J, K, 5**.
Books, Production of original—S. 6, English Act of 1879, **R, 7**.
Books of Bank, Inspection—When notice necessary before order, **B-D, 9**.

C

- Certified copy, Meaning of, S. 2, 4*.
Admissibility in evidence of, of entries in books of Banks to which this Act does not apply, **P, 6**.
Company, Meaning of, S. 2, 4.
Costs, of any application to Court or Judge, under or for purposes of this Act, S. 7, 9.
Court, Meaning of, S. 2, 4.
Inspection of Bankers' books by order of, or Judges, **S. 6, 7-9**.

D

- Definition of "Company," S. 2, 4*.
Do. of "bank", **S. 2, 4, 5**.
Do. of "bankers", **S. 2, 4**.
Do. of "legal proceeding", **S. 2, 4**.
Do. of "Court", **S. 2, 4**.
Do. of "Judge", **S. 2, 4**.
Do. of "trial," **S. 2, 4**.
Do. "certified copy", **S. 2, 4**.

E

Evidence, Admissibility in of certified copies of entries in books of Bank to which this Act does not apply, *P*, 5.

Evidence Act, Ss. 74, 76—Loan Register of the Public Debt Office in the Bank of Bengal, *J*, *K*, 5.

I

Inspector, Right to, *Y—A*, 3.

Inspection, of books by order of Court of Judges, *S*, 6, 7.

S. 7, Bankers' Books Evidence Act of 1879, England, *S—V*, 7, 8.

Books of Bank—When notice necessary before order, *B—D*, 9.

J

Judge, Meaning of, *S. 2*, 4.

Inspection of Bankers' books by order of Court or, *S. 6*, 7—9.

L

Legal proceeding, Meaning of, *S. 2*, 4.

Loan register, Whether the, is a Bankers' book, *I*, 5.

of the Public Debt office in the Bank of Bengal—*Ss. 74, 76, Evidence Act*, *J*, *K*, 5.

Local Government, Power to extend provisions of this Act, *S. 3*, 5.

M

Madras and Bombay, Notification extending this Act in, *L*, 5.

N

Notice, When, necessary before order—Books of Bank—Inspection, *B—D*, 9.

Notification, Extending this Act in Madras and Bombay, *L*, 5.

O

Officer of Bank, Case in which, not compellable to produce books, *S. 5*, 7.

P

Power, of Local Government to extend provisions of Act, *S. 3*, 5.

Proof, Mode of, of entries in Bankers' books, *S. 4*, 5.

Mode of,—English Act, 5.

T

Public Debt Office, Loan register of the, in the Bank of Bengal, *Ss. 74, 76—Evidence Act*, *J*, *K*, 5.

Trial, Meaning of, *S. 2*, 4.

W

Words and Phrases, Meaning of "Court" in *S. 2*, 4.

Do. "Judge" in *S. 2*, 4.

Do. "trial" in *S. 2*, 4.

Do. "certified copy" in *S. 2*, 4.

Do. "Company" in *S. 2*, 4.

Do. "bank" in *S. 2*, 4.

Do. "Bankers' books" *S. 2*, 4.

Do. "legal proceeding" in *S. 2*, 4.

THE
INDIAN INCOME-TAX ACT

(ACT II OF 1886).

(WITH THE CASE-LAW THEREON).

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

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THE INDIAN INCOME-TAX ACT, 1886. (ACT II OF 1886).

[Passed on the 29th January, 1886.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1860	XXXII	Income-tax	Rep., Act VIII of 1868.
1861	XXI	Do.	Do.
1862	IX	Do.	" " VII of 1868.
1862	XVI	Do.	VIII of 1868.
1863	XXVII	Do.	Do.
1869	IX	Do.	XVI of 1870.
1869	XXIII	Do.	Do.
1870	XVI	Do.	XII of 1871.
1871	XII	Do.	XVI of 1874.
1872	VIII	Do.	Do.

For further Acts, see also the first Schedule to Act II of 1886, *infra*.

1886	II	Income-tax	Rep. in part, Act XII of 1891 ; VI of 1902. Amended, Act XI of 1903.
------	----	------------	--

An Act ¹ for imposing a tax on income derived from sources other than agriculture.

WHEREAS it is expedient to impose a tax on income derived from sources other than agriculture ; It is hereby enacted as follows :—

(Notes).

I.—“ Act.”

(1) Short title.

The “ Indian Income Tax Act,” 1886 - See the Indian Short Titles Act, 1897 (XV of 1897). A

(2) Legislative Papers.

For statement of objects and reasons, see Gazette of India, 1886, Pt. V, p. 33.

For Report of the Select Committee, see Gazette of India, Pt. IV, p. 41.

For Proceedings in Council, see Gazette of India, Supplement, pp. 45, 179 and 214. B

(3) Rules of Government of India.

For consolidated rules made under the powers conferred by the Act, see Gazette of India, 1890, Pt. I, p. 409 ; Gen. R. and O. C

(4) Object of the Act.

The Act is built on the foundations laid some years previously for the License Tax Act, and is not an introduction, but an enlargement, an extension, and equalisation of direct taxation. Colvin's speech in introducing the Income Tax Bill. D

I.—“ Act ”—(Concluded).

(5) Scope of the Act.

Now, the Income-tax Act declares that it is an Act intended to impose a tax on income derived from sources other than agriculture. 6 C.W.N. 128 (130) = 28 C. 637. E

Under the License Tax Acts only profits derived from trades, dealings and industries were taxed, but under the Income Tax Act all sources of income excepting agriculture and operations subsidiary thereto and certain other sources of income specified in S. 5 are taxable.

(6) Construction of the Act.

It may be taken as a well settled rule of law, that the subject is not to be taxed, unless the language of the Statute clearly imposes the obligation, and in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. 34 C. 257 (268) = 5 C.L.J. 148 (156). F

Per Lord Russell, C. J.—The duty of the Court is to give effect to the intention of the Legislature, and that intention is to be gathered from the language employed; but when once it is ascertained, it is not open to the Court to narrow or whittle down the operation of the Act by considerations of hardship or business convenience or the like. *Attorney-General v. Carlton Bank* (1899) 2 Q.B. 158 (164), referred in 34 C. 257. G

Per Lord Cairns :—The rule means little more than this, that inasmuch as there was not any a priori liability in a subject to pay any particular tax, nor any antecedent relationship between the tax-payer and the taxing authority, no reasoning founded on any supposed relationship of the tax-payer and the taxing authority, could be brought to bear upon the construction of the Act, and, therefore, the tax payer had a right to stand upon the literal construction of the words used, whatever might be the consequences. *Pryce v. Monmouthshire Canal and Ry. Cos.*, (1879) 4 A.C. 197 (202), referred in 34 C. 257. H

Per Lord Cairns :—A Taxing Act must be construed strictly. There must be words to impose the tax, and if words are not found which impose the tax, it would not be imposed. *Cox v. Rabbits* (1878) 3 A. C. 473 (476) referred in 34 C. 257. I

Per Lord Halsbury :—In construing Act which professes to impose a charge we have no governing principle of the Act to look at; we have simply to go on the Act itself to see whether the duty claimed is that which the Legislature has enacted. It is necessary to state, however, that this rule, while valuable as a caution, cannot be taken as substantially varying the ordinary rules for construing all statutes. *Lord Advocate v. Fleming* (1897) A.C. 145 (152) referred in 34 C. 257. J

(7) Machinery of assessment and appeal.

The machinery of assessment and appeal provided by the Licensing Act has been retained as far as possible, so as to minimise, where it cannot be wholly avoided, the chances of inquisitorial or vexatious proceedings. Colvin's speech in introducing the Bill. K

CHAPTER I.

PRELIMINARY.

1. (1) This Act extends ¹ to the whole of British India ², and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor General in Council in that behalf; and

(2) It shall come into force on the first day of April, 1886.

(3) [*Rep. by the Repealing and Amending Act, 1891 (XII of 1891.)*]

(Notes).

1.—“Extends.”

Places to which the Act is extended.

Act II of 1886 has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation, (III of 1872), S. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899).

The Act has been previously extended to these Parganas under S. 5 of Scheduled Districts Act, 1874 (XIV of 1874), Gazette of India, 1826, Pt. I, p. 974.

It has also been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), S. 4 and Sch. I. **L-N**

2.—“British India.”

Statute 21 and 22 Vic.; C. 106.

“British India” means the territories for the time being vested in her Majesty by the statute 21 and 22 Victoria 106, Act XII of 1891, Schedule I. **O**

2. On and from the day on which this Act comes into force the enactments specified in the first schedule to this Act shall be repealed, except as to fees payable and other sums due under those enactments and the mode of recovering the same.

3. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) “local authority” means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund.

(2) “company” means an association carrying on business in British India, whose stock or funds is or are divided into shares and transferable, whether the company is incorporated or not, and whether its principal place of business is situate in British India or not :

(3) “prescribed” means prescribed by the Governor General in Council by notification in the Gazette of India, or by the Governor General in Council or a Local Government by rules made under this Act :

(4) "salary" ¹ includes allowances, fees, commissions, perquisites or profits received, in lieu of or in addition to a fixed salary, in respect of an office or employment of profit; but, subject to any rules which may be prescribed in this behalf, it does not include travelling, tentage, horse or sumptuary allowance, or any other allowance granted to meet specific expenditure:

(5) "income" means income and profits accruing and arising or received in British India, and includes, in the case of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty, any salary, annuity, pension or gratuity payable to that subject by the Government or by a local authority established in the exercise of the powers of the Governor General in Council in that behalf:

(6) "Magistrate" means a Presidency Magistrate or a Magistrate of the first or second class:

(7) "person" includes a firm and a Hindu undivided family:

(8) "defaulter" includes a company or firm making default under this Act:

² (9) "Collector" means the chief officer in charge of the revenue-administration of a district, and, in a presidency-town, any officer whom the Local Government, by notification in the Official Gazette, may, by name or by virtue of his office, appoint to be a Collector for the purposes of this Act; in the case of a company or firm, it means the Collector, as here defined, of the district or presidency-town in which its principal place of business in British India is situate; and, in the case of any other person chargeable under this Act, it means the Collector, defined as aforesaid, of the District or the presidency-town in which the person has his residence.

(10) "principal officer," used with reference to a local authority or a company or any other public body or association not being a local authority or company, means—

(a) the secretary, treasurer, manager or agent of the authority, company, body or association; or,

(b) any person connected with the authority, company, body or association upon whom the Collector has caused a notice to be served of his intention of treating him as the principal officer thereof and;

(11) "Part" means a Part of the second schedule to this Act.

(Notes).

1.—"Salary."

(1) **Salary**—Money used by *Sajjadanashin* for his maintenance.

The money which a *sajjadanashin* appropriates out of the *Khankah* income, for his own maintenance, is not a salary or remuneration for his services within the meaning of this clause. 7 C. 647. P

1.—“Salary” —(Concluded).

(2) Tentage allowance, whether salary.

The tentage allowance included in the pay and the Indian allowances of an officer in military employ under Art. 748 of the Army Regulations, India, Vol. I, Pt. I shall be deemed to be salary, unless the officer has provided and has in his possession the camp equipage of his rank in a serviceable condition. See Appendix A.

(3) Horse allowance—Salary.

The horse allowance shown as included in the consolidated or staff pay of the several appointments specified in Art. 91 of the Army Regulations, India, Vol. I, Pt. I, shall be deemed to be salary, unless the officer has provided and actually maintains the number of *bona fide* charges prescribed for his rank. See Appendix A.

2.—“Section 3 (9).”

Political Officers invested with powers of Collector.

For a list of Political Officers invested with the powers of Collector for the purposes of this Act, see Appendix A.

CHAPTER II.

LIABILITY TO TAX.

4. Subject to the exceptions mentioned in the next following section,

Incomes liable to the tax. there shall be paid, in the year beginning with the first day of April 1886, and in each subsequent year, to the credit of the Government of India, or as the Governor General in Council directs, in respect of the sources of income¹ specified in the first column of the second schedule to this Act, a tax at the rate specified in that behalf in the second column of that schedule.

(Notes).

General.

(1) Income-tax, nature of—Road cess.

The income-tax is a tax imposed by the Legislature of the Government of India upon all the people of India whose incomes exceed a certain amount. It forms part of the financial system of India, and is levied, mainly, if not entirely, for the purpose of all India. The subject-matter of the tax is a man's annual income from whatever source derived, and is levied upon what actually comes into his hands as income and not upon the value of his property. But the Road cess under Bengal Act X of 1871 is levied by a local Legislature. It is not a tax upon income, but is a tax upon immovable property, assessed upon the annual value of the property. 4 C. 576 (580).

(2) Double taxation—Income-tax and cesses.

(a) Courts always look with disfavour upon double taxation, and statutes will be construed, if possible, so as to avoid double taxes. When legislative intent is clear and unmistakable, effect must be given to the statutory provisions on the subject. The question of double taxation is one of expediency for the consideration of Legislature; it cannot be affirmed as a matter of course that double taxation is forbidden. 34 C. 257 = 5 C.L.J. 148 (174).

General—(Concluded).

- (b) It cannot be affirmed, as a general proposition, that the liability to pay income-tax carries with it, as a necessary consequence, exemption from road and works cesses. 35 C. 82 (F.B.)=11 C.W.N. 1053=6 C.L.J. 342. Y
- (c) Lands from which profits subject to income-tax are derived are not assessed with road cess tax except when such land is used for agricultural purposes. 28 C. 637=6 C.W.N. 128. W

I.—“Income.”

(1) Term “income” defined.

The term “income” is defined in the Oxford Dictionary, Vol. V; p. 162, to be “that which comes in as the periodical produce of one’s work, business, lands, or investments, considered in reference to its amount, and commonly expressed in terms of money; annual or periodical receipts accruing to a person or corporation. 34 C. 257=5 C.L.J. 148 (172). X

(2) Income—Principal debt repayable by periodical instalments.

Where a principal debt is made repayable by periodical instalments, none of the instalments, is chargeable with income-tax; where, therefore, the purchase money of an estate is made, payable by periodical instalments, although each instalment may in substance, partially consist of interest: the periodical instalments are not liable to be assessed with income tax. *Foley v. Fletcher* (1858), 3 H. and N. 769 referred in 34 C. 257. Y

(3) Income—Annuity representing capital.

Where the Secretary of State had power to contract by purchase a railway, paying for the purchase, the full value of all the shares of the company, with the option of paying, instead of a gross sum, an annuity for a term of years, each instalment of the annuity representing in substance an instalment of the purchase money, and interest on the amount of the purchase money unpaid, held, that as capital could not be taxed as income, income tax was not payable upon that part of the annuity which essentially represented capital. *Secretary of State v. Scoble*. (1903) A.C. 299 referred in 34 C. 257. Z

(4) Mineral lease, Nature of.

- (a) Although a mineral lease, when properly considered, is really a sale out and out of a portion of the land, that does not justify the inference that no income tax should be imposed on the rent reserved in the mineral lease. *Lord Blackburn in Coltness Iron Co. v. Black* (1881), 6 A.C. 315 (335) referred in 31 C. 257. A
- (b) The occupation of mine is only valuable by removal of portions of the soil, and whether the occupation is paid for in money or in kind—is fixed beforehand by contract or measured afterwards by the actual produce—it is equally in substance a rent, inasmuch as it is the compensation which the occupier pays the landlord for the species of occupation which the contract between them allows. *Reg v. Westbrook and Reg v. Everist* (1847), 10 Q.B. 178=74 R.R. 248, referred in 34 C. 259. B

1.—“Income ”—(Concluded).

(5) Income—Royalty from mines.

- (a) The word “income” is as large a word as can be used to denote a person’s receipts and it is wide enough to include royalty received from mine. *Sir George Jessel in re Huggins* (1882) : 51 L.J. Ch. 398, referred in 34 C. 257. **C**
- (b) Money received as royalty from a mine is “income,” and distributable as such, and not as a part of the corpus of the estate, because royalty is the most appropriate word to apply to rental based on the quantity of coal or other mineral that is or may be taken from a mine. *Raynolds v. Hamia* (1893) 55 Fed. Rep. 783 (800), referred in 34 C. 257. **D**
- (c) As the term “income” as used in this section is comprehensive enough to include a royalty received by an owner on the coal raised in the mines and is not exempted from the operation of S. 4 by reasons of the exceptions specified in S. 5 of the Act, and, as income, it is liable to be assessed with income-tax. 34 C. 257=5 C.L.J. 148. **E**
- (d) The term “income” includes a sum accruing as royalty under an oil lease of land, granted in consideration of a royalty of part of the oil. *In re Woodburn’s Estate* (1881) 138 P.C. 606=21 Am. St. Rep. 932 referred in 34 C. 257.

(6) Sajjadanashin of Sasseram khankah, whether liable to income-tax. **F**

The *Sajjadanashin* of *Sasseram Khankah* is not assessable with income-tax under the provisions of this section, in respect of such moneys as he derives from the properties appertaining to *Khankah* for the purpose of his own maintenance and the maintenance of his family, the money that he appropriates, out of the *Khankah* income, for such purpose, not being a “salary” or remuneration for his services within the meaning of S. 3 of the Act. 27 C. 674. **G**

5. (1) Nothing in section 4 shall render liable to
Exceptions. the tax—

- (a) any rent or revenue derived from land which is used for agricultural purpose¹ and is either assessed to land-revenue or subject to a local rate assessed and collected by officials of the Government, as such ; or
- (b) any income derived from—
 - (i) agriculture,² or
 - (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or
 - (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him,³ when he does not keep a shop or stall for the sale of such produce or
- ⁴(c) any building owned and occupied by the receiver of the rent or revenue of any such land as is referred to in clause (a), or by the cultivator, or the receiver of rent-in-kind, of any land

with respect to which or the produce whereof any operation mentioned in clause (b) is carried on :

- Provided that the building is on or in the immediate vicinity of the land and is a building which the receiver of the rent or revenue, of the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, factory or other out-building ; or
- (d) any profits of a shipping company incorporated or registered out of British India having its principal place of business out of India and its ships ordinarily engaged in seagoing traffic out of Indian waters ; or
 - (e) any income derived from property solely employed for religious or public charitable purposes ⁵ ; or
 - (f) any income which a person enjoys as a member of a company or of a firm or of a Hindu undivided family when the company or the firm or the family is liable to the tax ; or,
 - ⁶(g) subject to any conditions and restrictions which may be prescribed in this behalf, such portion, not exceeding one-sixth, of the income in respect where of a person would, but for this exception, be chargeable under this Act, as is deducted from the salary of the person under the authority or with the permission of the Government for the purpose of securing a deferred annuity to him or a provision to his wife or children after his death or is paid by the person to an insurance company in respect of an insurance or deferred annuity⁷ on his own life or on the life of his wife ; or
 - (h) any interest on stock-notes ; or
 - (i) the salary of any officer, warrant-officer, non-commissioned officer of private of Her Majesty's Forces or of Her Majesty's Indian Forces ⁸ who is not in an employment which, according to the ordinary practice⁹ is held indifferently by military persons and civilians, and whose salary does not exceed five hundred rupees per mensem ; or
 - (j) any person whose income from all sources is less than [one thousand] rupees per annum.

⁹ (2) An officer or servant is not exempt from taxation under this Act by reason only of the income of his employer being exempt therefrom under this section.

(Notes).

Legislative change.

The words "one thousand" in S. 5 (1) (j) were substituted for five "hundred" by the Indian Income Tax (Amendment) Act. 1903 (XI of 1903), S. 2 (1).

1.—“*Land which is used for agricultural purposes.*”**Profits of *mela*.**

The land on which a *mela* is held, is no doubt land used for purposes of agriculture, when it is not being used for the purposes of the *mela*; but when it is being used for the purposes of the *mela*, it is not being used for the agricultural purposes and therefore the profits of the *mela* are not incomes which would be exempted from income-tax under S. 6 of Act II of 1886. 6 C.W.N. 128 = 28 C. 637. I

2.—“*Agriculture.*”(1) **Exemption.**

This section exempts from the liability to the tax, incomes derived from agriculture or operations connected with agriculture. 6 C.W.N. 128 = 28 C. 637. J

(2) ***Sajjadanashin of Sasseram Khankah*, whether liable to be assessed with income-tax.**

See 27 C. 674, under S. 4, *supra*. K

3.—“*Sale....him.*”**Scope of clause (1) (b) (iii).**

It may be argued with some plausibility, that this clause must have been introduced, because the general words used in S. 4 are wide enough to embrace incomes derived from the sale of the produce or part of the soil. It is not necessary, however, to draw any such inference from the clause in question, because it is quite possible that the clause may have been put under the influence of excessive caution, and it is not safe to draw any inference from what may be a superfluous provision. 34 C. 257 = 5 C.L.J. 148 (173). L

4.—“*Section (5) (1) (c).*”**Principle of exemption.**

This clause exempts from liability to the tax the whole of the annual value of buildings which landholders and agriculturists own and occupy on, or in the immediate neighbourhood of, the land they hold and cultivate, and which are necessary to them in the exercise of their vocation as landholders and agriculturists. Thus, while a landholder will be exempt from the tax in respect of the annual value of the homestead (if any) appurtenant to his land, he will be assessable in respect of any other house he may own and occupy. Report of the Select Committee. M

5.—“*Solely employed for religious or public charitable purposes.*”(1) **Scope of the clause—Educational endowments.**

This clause is based on a similar clause in Act VIII of 1872. The exception is sufficient to cover educational endowments, and does not, as has been suggested, open a door to the evasion of the Act by colorable gifts to idols or any like devise. Report of the Select Committee. N

(2) ***Sajjadanashin of Sasseram Khankah*, whether liable, to be assessed with income tax.**

See under S. 4, *supra*, 27 C. 674. O

5.—“Solely employed for religious or public charitable purposes”
—(Concluded).

(8) Claim for exemption—Certificate.

Any claim under this sub-section to exemption from the levy of the tax on the interest of securities employed solely for religious or public charitable purposes, within the meaning of the clause, must be supported by a certificate from the Collector, which shall be in Form D. See Appendix A. P

6.—“Section (5) (1) (g).”

(1) Clause based on the English Law.

This clause, excepting from liability to the tax any portion, not exceeding one-sixth, of his income, which a person pays either to the Government or to a company in respect of life-insurance or deferred annuity, is based on the English Law. Report of the select Committee. Q

(2) Exemption—Limitation.

A claim to exemption preferred under the clause on that portion of income taxable under Part I of the second schedule of the Act which is paid as a premium to an Insurance Company shall not be entertained if the claim is made after the expiration of six months from the last day of the financial year during which the premium was paid. See Appendix A. R

7.—“In respect of an insurance or deferred annuity.”

(1) Deduction for what purposes to be made.

The amounts exempted from the tax by this clause shall not be deducted from income for the purpose of determining whether the income is liable to the tax, or of determining under Pt. I of the second schedule of the Act the rate at which the tax shall be levied. See Appendix A. S

(2) Premium payable in sterling—Deduction.

When a deduction is made from the amount of salary, pension, or annuity liable to assessment on account of payment made to a Life Insurance Company, the sum deducted shall, if the premium is payable in sterling, be the actual cost of remittance as stated by the assessee; or, if the assessee is unable to state such actual cost, the equivalent in rupees of the sterling payment calculated at the official rate of exchange for the year in which the deduction is made. See Appendix A. T

(3) Deduction on amount of insurance—Proof.

A deduction, such as is mentioned above, must be supported either—

(1) by the original receipt of the Insurance Company; or (2) in the case of a deduction claimed by a servant of the Government or of a local authority by a copy of the same presented, together with the original, to the officer who pays the salary, pension, or annuity, and attested by that officer, who should, after such attestation, return the original; or

(3) by a duplicate receipt given by the Insurance Company; or

(4) by a certificate of payment given by the Insurance Company.

In cases (1), (3) and (4), the receipt or certificate should be returned as soon as the fact of payment is admitted in the due course of audit.

7.—“In respect of an insurance or deferred annuity”—(Concluded).

Where the Collector is satisfied that none of the above prescribed documents can be produced without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, he may accept such other proof of payment of the premium as he may deem sufficient. See Appendix A. U

8.—“Her Majesty's Indian Forces.”

Indian Marine service.

Officer and men of the Indian Marine service shall not, for the purposes of this clause, be treated as belonging to Her Majesty's Indian forces. See Appendix A. Y

9.—“Sub-section 2.”

Scope.

This sub-section makes it clear that a salaried manager of land is not exempt from the tax by reason only of the income of his employer being exempt therefrom. Report of the Select Committee. W

6. The Governor General in Council may, by notification ¹ in the Gazette of India, exempt from liability to the tax the whole or any part of the income of any class or tribe, or of any persons residing in any specified area, and may, by a like notification, revoke the exemption.

Power to make exemptions.

(Note).

1.—“Notification.”

Consolidated Notification.

For the consolidated notification as to exemptions from tax and assessment under the Act issued under this section and S. 38, see Gen. R. and O. and Gazette of India, 1907, Pt. I, p. 311. Appendix A. X

CHAPTER III.

ASSESSMENT AND COLLECTION.

A.—Salaries and Pensions.

7. In the case of a person receiving any salary,¹ annuity, pension or gratuity from the Government, any sum payable to him by the Government in respect of the salary, annuity, pension or gratuity, shall be reduced by the amount of the tax to which he is liable under Part I in respect thereof.

Mode of payment in case of Government Officials and pensioners.

(Note).

1.—“Salary.”

Deduction compulsorily made.

Any sums such as payments to regimental mess or band funds or the like compulsorily stopped from salary by the orders, or the approval, of the Government, shall be deducted from the salary previous to assessment.

A portion of salary withheld in pursuance of an order of a Court is not a sum compulsorily stopped from salary within the meaning of this rule.

See Appendix A. Y

8. (1) In the case of a person receiving any salary, annuity, pension or gratuity, from a local authority, the tax to which he is liable under Part I shall, at the time of the payment to him of any of the salary, annuity, pension or gratuity, be deducted therefrom by the officer whose duty it is to make the payment, and be paid by that officer within the prescribed time to the credit of the Government of India ¹ or as the Governor General in Council directs.

Mode of payment in case of servants and pensioners of local authorities.

(2) If that officer does not deduct and pay the tax as required by sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(3) If, when any payment is made, the tax is from any cause not deducted, it may, and on the requisition of the Collector shall, be deducted when any salary, annuity, pension or gratuity is subsequently paid to the person liable to the tax.

(4) The power to deduct under this section shall be without prejudice to any other mode of recovery.

(Notes).

I.—“And be paid...of the Government of India.”

(1) **Deduction for salary—Time within which amount to be paid to the Government of India.**

The time within which amounts deducted from salary, annuity, pension or gratuity, paid by a Local Authority under S. 8, sub-S. (1) of the Act must be paid to the credit of the Government of India, is fixed at one week from the date of payment of the salary of pension, annuity, or gratuity. See Appendix A. Z

(2) **Payment to credit of Government—Form.**

The payment to the credit of Government shall be made by remitting the amount to the Collector with a statement giving the following particulars for each person from whom the tax has been realized :—

- (1) Name
- (2) Period for which the salary, pension, or annuity has been paid.
- (3) Amount of salary, pension, annuity or gratuity paid.
- (4) Amount of tax. A

9. (1) The tax to which a person receiving any salary, annuity, pension or gratuity from a company, or from any other public body or association not being a local authority or company, or from a private employer, is liable under Part I shall be payable by him at the time when any portion of the salary, annuity, pension or gratuity is paid to him.

Mode of payment in case of servants and pensioners of companies and private employers.

(2) The Collector may, subject to such conditions as may be prescribed, enter into an arrangement ¹ with any company, or any such body or

association as aforesaid, or any private employer, with respect to the recovery on behalf of the Government by the company, body, association or employer of the tax to which any person receiving any salary, annuity, pension or gratuity from the company, body, association or employer is liable under Part I.

(Note).

1.—“Enter into an arrangement.”

Agreement between the Collector and companies or private employers—Stamp.

The stamp duty payable under the General Stamp Act on agreements made under this sub-section has been remitted by the Governor-General. (Government of India Notification No. 785, S.R., dated 17th February, 1899). **B**

10. The principal officer of every local authority, and of every company, and of every other public body or association not being a local authority or company, shall prepare, and, on or before the fifteenth day of April in each year, deliver or cause to be delivered to the Collector, in the prescribed form ¹, a return in writing showing—

Annual return by principal officer of company or association.

(a) the name of every person who is receiving at the date of the return any salary, annuity or pension, or has received during the year ending on that date any gratuity, from the authority, company, body or association, as the case may be, and the address of every such person so far as it is known; and

(b) the amount of the salary, annuity, pension or gratuity, so received by each such person, and the time at which the same becomes payable or, in the case of a gratuity, was paid.

(Note).

1.—“In the prescribed form.”

Form of return.

The return required by this section shall be in form A hereto appended. (See Appendix A.)

The name of any person who is receiving, at the date of the return prescribed by the section, a salary, pension, or annuity which does not amount to Rs. 300 per annum or has received during the year ending on that date a gratuity which does not amount to that sum, need not be shown in the return. (*Ibid.*) **C**

B.—Profits of Companies.

11. The principal officer in British India of every company shall prepare, and, on or before the fifteenth day of April in each year, deliver or cause to be delivered to the Collector, a statement in writing signed by him of the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or,

Annual statement of nett profits.

If the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then of the nett profits so made during the year ending on the said thirty-first day of March.

12. (1) If the Collector has reason to believe that a statement delivered under section 11 is incorrect or incomplete, he may cause to be served on the principal officer of the company a notice requiring him, on or before a date to be therein mentioned, either to attend at the Collector's office and produce, or to cause to be there produced, for the inspection of the Collector, such of the accounts of the company as refer to the year to which the statement relates and as are in his possession or power.

Power to require officers of companies to produce accounts.

(2) On the day specified in the notice, or as soon afterwards as may be, the Collector shall, by an order in writing, determine the amount at which the company shall be assessed under Part II, and the time when the amount shall be paid, and, subject to the provisions of this Act, that amount shall be payable accordingly.

C.—Interest on Securities.

13. (1) The tax payable under Part III in respect of the interest on any of the securities mentioned in that Part shall, at the time when and place where any of the interest is paid, be deducted therefrom by the person empowered to pay the interest, and be paid by that person within the prescribed time to the credit of the Government of India or as the Governor General in Council directs.

Mode of payment of tax on interest on securities.

(2) If that person does not deduct and pay the tax as required by sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(Notes).

1.—“Interest.”

(1) Securities—Interests payable by Government.

In the case of securities, the interest on which is payable by the Government of India, the amount deducted on account of the tax under this sub-section, shall be paid to the credit of the Government on the same day as the payment of interest is made. See Appendix A. **D**

(2) Securities—Interest not payable by Government.

In the case of securities, the interest on which is not payable by the Government of India, the amount so deducted shall be paid to the credit of the Government within one week from the date on which interest is paid. The person deducting the amount should pay it to the credit of the Government by remitting the amount to the Collector, with a statement showing the following particulars :—

1.—“Interest”—(Concluded).

- (1) Name of owner.
 - (2) Description of security.
 - (3) Number of security.
 - (4) Date of security.
 - (5) Amount of security.
 - (6) Period for which interest is drawn.
 - (7) Amount of interest.
 - (8) Amount of tax.
- See Appendix A.

D.—Other Sources of Income.

Ordinary Mode of Assessment and Collection.

14. The Collector shall, from time to time, determine¹ what persons are chargeable under Part IV, and the amount at which every person so chargeable shall be assessed.

Collector to determine persons chargeable.

1.—“ Shall from time to time determine.”

(1) Orders of Collector - Privilege.

The orders of the Collector under this section determining the amount of income tax payable, are not privileged documents under S. 124, Evidence Act, as they are not communications made to him. 19 M.L.J. 263=32 M. 62=4 M.L.T. 417=1 Ind. Cas. 705. **F**

(2) Compulsory payment of income-tax payable by another—Contract Act, Ss. 69 & 70.

Where, notwithstanding the protest of the plaintiffs that the outstandings of a deceased person had not come to them, but had been bequeathed under his will to the defendants, the income-tax authorities collected assessment from them in respect of that amount, *held*, that the plaintiffs were not entitled to recover it under Ss. 69 and 70, Contract Act, as the Collector had not determined, under this section, that the defendants were chargeable under Part IV, or assessed them at any amount, as it was from the plaintiffs themselves that payment was demanded, and as it could not be said to have been made by the plaintiffs for the defendants, merely because the income tax authorities ought to have demanded and exacted payment from the defendants instead of the plaintiffs. 3 M.L.T. 111=31 M. 35. **G**

15. (1) The assessment¹ shall be made upon the income accruing to the person during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then upon the income accruing to him during the year ending on the said thirty-first day of March.

Mode of making assessment.

(2) In the case of a person for the first time becoming chargeable under Part IV within the year for which the assessment is to be made,

or within the year next before that year, assessment shall be made according to an average of his income for such period as the Collector, having regard to the circumstances, directs.

(Notes).

1.—“ Assessment.”

Assessment—Fraction of rupee.

In calculating the amount of tax payable, the amount due on a fraction of a rupee shall be neglected. Thus the tax to be realised on a monthly salary of Rs. 168-10-8 is Rs. 4-5-2 only. See Appendix A. H

16. (1) The Collector shall in each year prepare a list of the persons chargeable under Part IV whose annual income does not, in his opinion, amount to two thousand rupees.

List of incomes under two thousand rupees.

(2) The list shall be in the prescribed language or languages ¹, and shall state in respect of every such person the following particulars, namely :—

- (a) his name, and the source or sources of the income in respect of which he is chargeable ;
- (b) the year or portion of the year for which the tax is to be paid ;
- (c) the place or places, district or districts where the income accrues ;
- (d) the amount to be paid ; and
- (e) the place where, and the person to whom, the amount is to be paid.

(3) The list shall be filed in the office of the Collector, with a notification prefixed thereto requiring every person mentioned in the list to pay, within sixty days from a date specified in the notification, the amount stated in the list as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

(4) The list so filed shall be open to inspection at all reasonable times without any payment.

(5) The list, or such part or parts thereof as the Collector thinks fit, with the notification prefixed thereto, shall be further published in such manner as the Local Government may consider to be best adapted for giving information to all persons concerned.

(6) The list to be prepared in each year may be the list of the previous year with such amendments as the Collector finds to be necessary.

(Notes).

1.—“ In the prescribed language or languages.”

List prescribing language.

For notification prescribing list of languages in the Central Provinces, see C.P.R. and O.

17. In the case of a person chargeable under Part IV whose annual income is, in the Collector's opinion, two thousand rupees or upwards, the Collector shall cause a notice to be served on him stating the particulars (a) to (e), both inclusive, mentioned in section 16, sub-section (2), and requiring him to pay, within sixty days from a date specified in the notice, the amount stated therein as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

Notices to persons with incomes of two thousand rupees and upwards.

Power to modify ordinary procedure in special cases.

18. (1) Notwithstanding anything contained in section 16 or section 17, the Local Government may make rules¹ —

- (a) authorising or directing a Collector in specified cases, or classes of cases, to include in a list under section 16 any person who is liable to be served with a notice under section 17 instead of or in addition to serving him with such a notice, and to serve a notice under section 17 on any person liable to be included in a list under section 16 instead of or in addition to including him in such a list ;
- (b) authorising the Collector in any specified town or place to cause a general notice to be published, inviting every person chargeable under Part IV to deliver or cause to be delivered to the Collector, within a time specified in the notice, a return², in a prescribed form, published with the notice, of his income during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year ending on the thirty first day of March in the year immediately preceding that for which the assessment is to be made, then of his income during the year ending on the said thirty-first day of March ;
- (c) authorising the Collector in any presidency-town to cause a special notice to be served on any person chargeable under Part IV, inviting him to deliver or cause to be delivered to the Collector, within a time specified in the notice, a return in a prescribed form, accompanying the notice, of his income computed in the manner described in clause (b) of this sub-section.

(2) A return delivered under rules made under clause (b) or clause (c) of sub-section (1) must state the period during which the income has actually accrued ; and there must be added at the foot thereof a declaration that the income shown in the return is truly estimated on all the sources therein mentioned, that it has actually accrued within the period therein stated, and that the person making the return has no other source of income. .

(3) When a Collector authorised in that behalf by rules made under clause (b) or clause (c) of sub-section (1) has caused a notice to be published or served under those rules, he shall not include any person to whom the notice applies in any list made under section 16 or serve a notice on him under section 17 until the time specified in the notice published or served under those rules has expired.

(4) Rules made under this section shall be published in the official Gazette.

(Notes).

1.—“*Local Government may make rules.*”

Rules made by Local Governments.

For rules made by the—

- (1) Government of Bombay, see Bom.R. and O.
- (2) Government of Madras, see Mad. R. and O.
- (3) Government of United Provinces, see U.P.R. and O.
- (4) Chief Commissioner of Assam, see Assam Rules Manual.
- (5) Chief Commissioner, Central Provinces, see C.P.R. and O.
- (6) Chief Commissioner of Coorg, see Coorg District Gazette, 1886, Pt. I, p. 253, *ibid.*, 1901, Pt. I, p. 169. J

2.—“*A return.*”

(1) **Income-tax returns—Certificated copies—Admissibility.**

Certificated copies of income-tax returns are not admissible in evidence. 23 C. 950 (P.C.) = 23 I.A. 92. K

(2) **Income-tax returns—Evidentiary value.**

A return made to Income Tax Officer is not conclusive evidence, against the party making it, upon the point of perpetuity of a tenure. 6 W.R. 252. L

(8) **Income-tax return—Effect of on *onus*.**

Where the executant of a mortgage-deed denies receipt of consideration in a suit based upon the mortgage, having, however previously admitted receipt thereof, before the Registrar, the burden of proving non-receipt of consideration will not be shifted on to the plaintiff by the mere circumstance that the plaintiff had not mentioned the bond or the interest accruing thereon in the income-tax returns submitted by him. 23 C. 950 (P.C.) = 23 I.A. 92. M

(4) **Petitions to Income Tax Office—Estoppel.**

The petition submitting the schedule of his income by a petitioner in the Income Tax Office, are admissible as evidence against person submitting and subscribing it, but is not conclusive. Although a false statement made in it makes the petitioner amenable to a prosecution for giving false evidence, such false statement does not estop the person verifying the petition from proving that he made it to evade the tax and that the fact was otherwise than stated in the petition. 24 W.R. 173. N

19 Every amount specified as payable in a list or notice prepared or served under section 16 or section 17 shall be paid within the time, at the place, and to the person, mentioned in the list or notice.

Time and place of payment.

Trustees, Agents, Managers and Incapacitated Persons.

20. A person being the trustee, guardian, curator or committee of any infant, married woman subject to the law of England, lunatic or idiot, and having the control of the property of the infant, married woman, lunatic or idiot, whether the infant, married woman, lunatic or idiot resides in British India or not, shall, if the infant, married woman, lunatic or idiot is chargeable under Part IV, be chargeable under that Part in like manner and to the same amount as the infant, would be chargeable if he were of full age, or the married woman if she were sole, or the lunatic or idiot if he were capable of acting for himself.

Trustees, guardians and committees of incapacitated persons to be charged.

21. Any person not resident in British India ¹, whether a subject of His Majesty or not, being in receipt, through an agent of any income chargeable under Part IV, shall be chargeable under that Part in the name of the agent in the like manner and to the like amount as he would be chargeable if he were resident in British India and in direct receipt of that income.

Non-residents to be charged in names of their agents.

(Note).

1.—“ Not resident in British India.”

Agent of principal not residing in British India—Liability.

The agent of a circus company not resident in British India, but in receipt, though such agent, of income chargeable under the Act, is personally liable, and S. 23 does not make the liability conditional on having the funds of the principal. 22 B. 392. **O**

22. Receivers or managers appointed by any Court in India, the Courts of Wards, the Administrators General of Bengal, Madras and Bombay, and the Official Trustees shall be chargeable under Part IV in respect of all income officially in their possession or under their control which is liable to assessment under that Part.

Receivers, managers, Court of Wards, Administrators General and Official Trustees.

Power to retain duties charged on trustees, etc.

23. When a trustee, guardian, curator, committee or agent is, as such, assessed under Part IV,

or when a receiver or manager appointed as aforesaid, a Court of Wards, an Administrator General or an Official Trustee is assessed under that Part in respect of income officially received,

the person or Court so assessed may, from time to time, out of the money coming to his or its possession as trustee, guardian, curator, committee or agent, or as receiver, manager, Court of Wards, Administrator General or Official Trustee, retain so much as is sufficient to pay the amount of the assessment,

Occupying Owners.

24. (1) Where a building is occupied by its owner ¹ it shall be deemed a source of income within the meaning of this Act, and, if liable to be assessed under this Act, shall be assessed at five-sixths of the gross annual rent at which it may reasonably be expected to let, and, in the case of a dwelling-house, may be excepted to let unfurnished.

(2) "Owner," as used in this section with reference to a building, means the person who would be entitled to receive the rent of the building if the building were let to a tenant.

(Note).

1.—"*Building is occupied by its owner.*"

Letting value of house.

The amount to be assessed under this sub-section on account of a building occupied by the owner thereof shall not in any case exceed 10 per cent. of the aggregate income of the owner derived from all sources. It must not, however, be understood from this that a maximum of 10 per cent. of the aggregate income of the owner is to be assumed in every case as equivalent to the letting value of his house. The letting value should in all cases be ascertained on the best data available in view of the circumstances of the locality in which the house is situated.

See Appendix A.

P

CHAPTER IV.

REVISION OF ASSESSMENT.

Petition to Collect-
or against assess-
ment under Part IV.

25. (1) Any person objecting to the amount at which he is assessed, or denying his liability to be assessed, under Part IV may apply by petition to the Collector to have the assessment reduced or cancelled.

(2) The petition shall ordinarily be presented within the period specified in the notification prefixed to the list filed under section 16, or in the notice served under section 17, as the case may be. But the Collector may receive a petition after the expiration of that period if he is satisfied that the objector had sufficient cause for not presenting it within that period.

(3) The petition shall, as nearly as circumstances admit, be in the form contained in the third schedule to this Act, and the statements contained in the petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints.

(Note).

1.—"*Petition.*"

(1) Court-fee.

The fees payable under the Court Fees Act on an application to a Collector or to any other officer or person exercising all or any of the powers of a

1.—“Petition” —(Concluded).

Collector, under this section with respect either to liability to payment or to the amount of an assessment, has been limited to one anna (Government of India Notification, No. 785, S. R., dated 17th February, 1899).

(2) Objection to assessment of income tax—False statement—Penal Code, S. 193.

In determining objections taken under S. 14, Madras Act III of 1878 (=S. 25, of the Income Tax Act) to the assessment of income-tax, the Collector has the same power as a Civil Court to enforce the attendance of, and to examine, witnesses on oath or affirmation, in order to ascertain the correctness of the fact alleged by the petitioner. If a false statement is made during such enquiry, the maker of it is liable to be prosecuted for an offence under S. 193, Penal Code. 1 Weir 782. R

Where a person assessed with an income-tax of Rs. 500 objected to the tax on the ground that his income was only Rs. 225, withdrew the objection when asked to produce the account, but his books, when examined, showed that the accused had lent between Rs. 5,000 & 6,000 to various villagers and there was nothing to show the rate of interest, held, that, as the accused had failed to prove his allegation that his income was not more than Rs. 225, and that as his books showed that he had lent a large sum for interest the usual rate being between 12 to 24 per cent, the accused was rightly convicted under S. 193. 7 P.R. 1870 (Cr.). S

(3) False statement before Tahsildar.

A Tahsildar is not an officer competent to receive a petition under S. 19 of Act IX of 1869, and, therefore, a person making a false statement in such a petition cannot be convicted of perjury. 5 M.H.C.R. 326. T

2.—“Collector.”

Collector hearing objections under the section—Revenue Court—Judicial proceedings—Cr. P.C., 1898, S. 476.

The Collector, hearing objections to assessment under the Income Tax Act is a Revenue Court and his proceedings are judicial proceedings so that it is competent for him to pass an order under S. 476, Cr. P.C., for the prosecution of the objector for making a false declaration within the meaning of S. 25 of the Act. 44 P.R. 1905 (Cr.)=187 P.L.R. 1905=3 Cr. L.J. 128. U

The Collector shall fix a day and place for the hearing of the petition, and on the day and at the place so fixed, or on the day and at the place, if any, to which he has adjourned the hearing, shall hear the petition and pass such order¹ thereon as he thinks it.

Hearing of petition.

(Note).

1.—“Order.”

Orders of Collector—Privilege.

The orders of the Collector under this section determining the amount of the income-tax are not privileged documents under S. 124, Evidence Act, as they are not communications made to him, 19 M.L.J. 263=32 M. 62=4 M.L.T. 317=1 Ind. Cas. 705. Y

27. Subject to the control of the Local Government, the Commissioner of the Division, on the petition of any person deeming himself aggrieved by an order under sec. 12 sub-section (2), or section 26 shall, if the amount of the assessment to which the petition relates is two hundred and fifty rupees or upwards, and may in his discretion if the amount of the assessment is less than two hundred and fifty rupees, call for the record of the case, and pass such order thereon as he thinks fit.

28. The Collector or Commissioner may, for the purpose of enabling him to determine how the petitioner or the company which he represents should be assessed, summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents¹, by the same means, and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure :

XIV of 1893
(now Act V
of 1908).

Provided that the Collector or Commissioner shall not call for any evidence except at the instance of the petitioner or in order to ascertain the correctness of facts alleged by him.

(Note).

1.—“ Documents.”

Documents produced before Collector—Privilege—Evidence Act, S. 124.

Seeing that under S. 28 of the Income-Tax Act, the Collector can compel the production of documents and enforce the attendance of witnesses, it is difficult to say that documents produced or statements made under process of law can be said to be made in official confidence. They have to be made even if, in fact, no confidence is reposed in the official by the person who makes the statement. 19 M.L.J. 263 = 32 M. 62 = 4 M.L.T. 317 = 1 Ind. Cas. 705.

CHAPTER V.

RECOVERY OF ARREARS OF TAX.

29. The tax chargeable under this Act shall be payable at the time appointed in that behalf in or under this Act, or, if a time is not so appointed, then on the first day of June in each year.

30 (1) In any case of default under this Act the Collector, in his discretion, may recover a sum not exceeding double the amount of the tax either as if it were an arrear of land-revenue or by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the territories administered by the Local Government to which he is subordinate, or may pass an order that a sum not exceeding double that amount shall be recovered from the defaulter ;

Provided that where a person has presented a petition under section 25, such sum shall not be recoverable from him unless, within thirty days from the passing of the order on the petition, he fails to pay the amount, if any, required by that order.

(2) The Local Government may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (1) for the recovery of the tax chargeable under this Act.

(3) An order passed by the Collector under sub-section (1) shall have the force of a decree of a Civil Court in a suit in which the Government is the plaintiff and the defaulter is the defendant; and the order may be enforced in manner provided by the Code of Civil Procedure for the XIV of 186 enforcement of decrees for money; and the procedure under the said Court (now Act I of 1908), in respect of the following matters, namely,—

- (a) sales in execution of decrees,
- (b) arrest in execution of decrees for money,
- (c) execution of decrees by imprisonment,
- (d) claims to attached property, and
- (e) execution of decrees out of the jurisdiction of the Courts by which they were passed.

shall apply to every execution issued for levying the sum mentioned in the order; save that all the powers and duties conferred and imposed by the said Code upon the Court shall be exercised and discharged by the Collector by whom the order has been made or to whom a copy thereof has been sent for execution according to the provisions of the said Code, sections 223 and 224.

(4) The Local Government may direct ¹, with respect to any specified area, that the tax chargeable under this Act shall be recovered therein with, and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.

(5) No proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of three months from the last day of the year in respect of which the sum is payable ².

(Notes).

General.

(1) Scope.

This section provides for the continuance of the summary process of recovery described in S. 24 of the Bengal License Act. 1880. Report of the Select Committee.

General—(Concluded).**(2) Effect of the section.**

This section has not the effect of converting income-tax into an arrear of land revenue due in respect of the land which may be brought to sale for realization of the income-tax, but its effect is simply to extend the procedure prescribed by (Madras) Act II of 1864 and (India) Act I of 1890 to the recovery of arrears of income tax. 26 M. 230 (233)=12 M.L.J. 368. X

1.—“ May direct.”**Rules made under this clause—Bombay.**

For rules by the Government of Bombay as to the mode of recovering the tax on vehicles and animals plying for hire in Bombay, see Bom. R. and O. Y

2.—“ No proceeding....payable.”**(1) Scope of the clause.**

The section is more restrictive on the revenue authorities than the corresponding section of the Bengal License Act, 1880; and less so than the corresponding section of the Northern India License Act, 1878. Select Committee's report. Z

(2) Commencement of proceedings.

The——— for the purposes of this sub-section must be taken to run from the date of the issue of a distraint order or a demand notice in accordance with the provisions of Ss. 8 and 25, of Act II of 1864, or the issue of an order under sub-section (1) of this section. G.O., No. 151, dated 12th March, 1898. A

CHAPTER VI.**SUPPLEMENTAL PROVISIONS.****Composition.**

31. (1) If a company or person desires to compound for the tax assessable under Part II or Part IV, as the case may be, the Collector may, subject to such rules as may be prescribed in this behalf, agree with the company or person for a composition for the tax on such terms and for such period as he thinks fit.

(2) The agreement shall provide for the payment in each year of the period comprised in the agreement of the amount of the composition; and that amount shall be recoverable in the same manner and by the same means as any other assessment made under Part II or Part IV, as the case may be.

Receipts.

Receipts and their contents.

32. When any money is paid under this Act to the Collector or is recovered thereunder by him, he shall give a receipt for the same, specifying—

- (a) the date of the payment or recovery of the money;
- (b) the amount paid or recovered;

- (c) the person who was liable to the tax, and the source or sources of income in respect of which the tax was payable;
- (d) the year or part of the year for which the tax was payable;
- (e) the place or places, district or districts, where the income accrues; and
- (f) such other particulars, if any, as may be prescribed.

Amendment of Assessment.

33. If a company or person assessed under Part II or Part IV ceases to carry on the trade or business in respect whereof the assessment was made, or if any such person dies or becomes insolvent before the end of the year for which the assessment was made, or if any such company or person is, from any other specific cause, deprived of or loses the income on which the assessment was made, then the company or person or its or his representative in interest may apply to the Collector during or within three months after the end of the year, and the Collector, on proof to his satisfaction of any such cause as aforesaid, shall amend the assessment as the case may require, and refund such sum, if any, as has been overpaid.

Penalties.

Failure to make payments or deliver returns or statements.

34. (1) If a person fails ¹—

- (a) to deduct and pay any tax as required by section 8, sub-section (1), or section 13, sub-section (1), or
- (b) to deliver or cause to be delivered to the Collector in due time the return or statement mentioned in section 10 or section 11, or
- (c) to produce, or cause to be produced, on or before the date mentioned in a notice under section 12, such accounts as are referred to in the notice,

he shall, on conviction ² before a Magistrate ³, be punishable with fine ⁴ which may extend to ten rupees for every day during which the default continues.

(2) The Commissioner of the Division may remit wholly or in part any fine imposed under this section.

(Notes).

1.—“Fails.”

Failure to pay tax in time—Subsequent payment—Effect.

Where the tax-payer fails to pay the amount within the time specified by the notice, he is guilty of an offence within the terms of S. 25 of Act IX of 1869 (= S. 64) and his subsequent payment would not take the case out of the provisions of the section. 2 N.W.P. 113. B.

2.—“Conviction.”

(1) Conviction—Appeal.

No appeal lies to a Sessions Judge from the order of a Magistrate fining a defaulter. The only course open is to appeal to the Commissioner. 14 W.R. 71 (Cr.). But see 2 N.W.P. 113, *infra*. **C**

Although there are grounds for holding that the Legislature intended that convictions under Ss. 24 and 25 of Act IX of 1869 (= S. 34 of the present Act), should be summarily disposed of by the Magistrate, the right of appeal conferred by the Crim. Pro. Code, is not taken from persons convicted under the section. 2 N.W.P. 113. But see 14 W.R. 71 (Cr.), *supra*. **D**

(2) Appeal—Conviction when cannot be reversed.

It is not competent to a Judge on appeal from a conviction under Ss. 24 and 25 of Act IX of 1869 (= S. 34 of the present Act) to reverse the conviction merely because he regards it as one of hardship, nor has he to determine whether or not the failure to pay the tax was in pursuance of an intention to avoid payment. 2 N.W.P. 113. **E**

3.—“Magistrate.”

(1) Illegal assessment—Jurisdiction of Criminal Courts.

If a person thinks that he has been illegally assessed or assessed twice over for the same period with income and license tax, his remedy is first to pay the tax and then to take proceedings in the Revenue Department for its refund. Proceedings can only be taken in the Criminal Court, when a person fails or refuses to take or pay for a license. The only points which the Magistrate is competent to consider, in such proceedings, are whether the accused has been legally assessed for license tax, whether he has been served with the prescribed notice and whether, thereafter, he has failed to take out license. It is not competent to enquire whether the assessment has been rightly or wrongly made. 29 P.R. 1868 (Cr.). **F**

(2) Magistrate of second class—Jurisdiction.

In Rat. Un. Cr. C. 37, it was held, under Act IX of 1869, that a subordinate Magistrate of the second class had no jurisdiction to convict a person for the non-payment of the income-tax. But see S. 3 (6), *supra*. **G**

4.—“Fine.”

Imprisonment in default of payment of fine.

A Magistrate has no power, under S. 25 of Act IX of 1869, to sentence to imprisonment in default of the payment of fine imposed for not paying the income tax. 14 W.R. 70 Cr. But see 7 B.H.C.R. 76 Cr., *infra*.

The Income Tax Act being one passed after Act I of 1868 (general clauses), S. 5 of the latter Act authorizes the infliction of imprisonment in default of payment of fine for not paying the additional tax imposed upon a person by the Income Tax Act. 7 B.H.C.R. 76. But see 14 W.R. 70 (Cr.), *supra*. **H**

35. If a person makes a statement in a declaration mentioned in section 18, sub-section (2), which is false, and which he either knows or believes to be false or does not believe to be true, he shall be deemed to have committed the

False statement
in declaration.

Prosecution to be
at instance of Collec-
tor.

36. A person shall not be proceeded against for an offence under section 34 or section 35, except at the instance of the Collector ¹.

(Note).

1.—"Except at the instance of the Collector."

Prosecution under S. 34—Collector's duty to institute prosecution.

The provisions of S. 27 of Act IX of 1869 (=S. 36 of the present Act) seem to imply that the Collector ought, in each case, to exercise his discretion as to whether a prosecution should be instituted. The mere sending on the Tahsildar's report, containing an expression of the Collector's general desire to prosecute defaulters, cannot be held tantamount to the institution of a prosecution at the instance of the Collector. 2 N.W.P. 113. I

Sections 193 and
228 of Penal Code to
apply to proceedings.

37. Any proceeding under section 12 or Chap. IV of this Act shall be deemed to be a "judicial proceeding" ¹ within the meaning of sections 193 ² and 228 of the Indian Penal Code.

(Notes).

1.—"Judicial proceedings."

(1) Income-tax proceedings—Judicial proceedings—False statement.

Where a person makes on solemn affirmation, a statement before an Income-Tax Commissioner which statement the accused knew, or had reason to believe to be incorrect, held, that the accused had committed an offence under S. 193, I.P.C., as the proceeding before the Income-Tax Commissioner was a judicial proceeding. 9 B.H.C.R. Eq. 21. J

(2) Collector hearing objections under S. 25—Revenue Court—Judicial proceedings.

See 44 P.R. 1905 (Cr.) under S. 25, *supra*. K

2.—"S. 193."

Objection to assessment of income-tax—False statement.

See 1 Weir 782, 7 P.R. 1870 (Cr.) and 5 M.H.C.R. 326, under S. 25, *supra*. L

Power to make Rules.

38. (1) The Governor General in Council may make rules ¹ consistent with this Act for ascertaining and determining income liable to assessment, for preventing the disclosure ² of particulars contained in documents delivered or produced with respect to assessments under Part IV, and, generally, for carrying out the purposes of this Act, and may delegate to a Local Government ³ the power to make such rules so far as regards the territories subject to that Government.

(2) In making a rule for preventing the disclosure of any particulars referred to in sub-section (1), the Governor General in Council may direct that a public servant committing a breach of the rule shall be deemed to have committed an offence under section 166 of the Indian Penal Code. XLV of 1860.

(3) But a person committing any such offence shall not be liable to be prosecuted therefor without the previous sanction of the Local Government.

(4) Rules made under this section shall be published in the Official Gazette.

(Notes).

1.—“ Rules.”

Notification as to exemption from tax and assessment.

For the consolidated—under the Act issued under this section and S. 6, see Gen. R. and O. and Gazette of India, 1907, Pt. I, p. 311. **M**

2.—“ For preventing the disclosure.”

(1) Assessments documents—Disclosures prohibited.

All public servants are forbidden to make public or disclose, except for the purpose of the working of the Act, any information contained in documents delivered or produced with respect to assessments under Pt. IV of the second schedule of the Act, and any public servant committing a breach of this rule shall be deemed to have committed an offence under S. 166, I.P.C. **N**

All public servants are further enjoined to be most careful to regulate their proceedings as far as practicable in such manner as to prevent information which should be kept secret from becoming known. It should be noted that information of this nature is to be withheld by officers administering the Act from persons in the employment of assesseses. See Appendix A. **O**

(2) Production of Income-tax papers in Court—Privilege.

The oath of secrecy which is taken by Income-Tax officers under the Income-Tax Act does not apply to cases in which they are summoned to give evidence in a Court of Justice. *Lee v. Birrel*, 3 Camp. 337. **P**

Statements made and documents produced by assesseses before an Income-Tax Officer are not privileged from production in a Court of Justice under Ss. 123 and 124, Evidence Act. 19 M.L.J. 263 = 32 M. 62 = 4 M.L.T. 317 = 1 Ind. Cas. 705. **Q**

Scotland, C.J., compelled production of Income-tax Schedules, though objection was taken by the officer who appeared. *Reg. v. Yakatashkan*, 2nd Madras Session (1863). **R**

(3) Return submitted to Income-Tax Collector—Evidence Act, Ss. 123, 162.

The returns submitted to an Income-Tax Collector, or any statements before him, or any orders that may be made by him, do not refer to matters of state and do not fall within the exception contained in S. 162 of the Evidence Act. 19 M.L.J. 263 = 32 M. 62 = 4 M.L.T. 317 = 1 Ind. Cas. 705. **S**

(4) Rule 16—Production of income-tax papers before Court—Privilege.

S. 38 and Rule 16 framed by the Government of India are framed for the purpose of regulating the conduct of officers coming under their operation and from preventing any disclosures by them in the course of their duties, and their object was to secure the interests of those making the return under the Act. They do not apply to the production of Income-tax papers in a Court of Law in a suit between two parties. 26 C. 281.T

3.—“ May delegate to a Local Government.”

(1) Delegation of powers.

- Power to make rules under this sub-section has been delegated to Local Government by the Government of India. See Appendix A. U

(2) Rules by Local Government.

For rules in force in—

- (1) Ajmere Merwara, see Aj. R. and O.;
- (2) Assam, see Assam Manual of Local Rules and Orders, Ed. 1893, p. 280.;
- (3) Bengal, see Ben. R. and O.;
- (4) Bombay see Bom. R. and O.;
- (5) Central Provinces, see C.P. R. and O.;
- (6) Madras, see Mad. R. and O.;
- (7) Punjab, see Punj. R. and O.;
- (8) United Provinces of Agra and Oudh, see U.P. R. and O. Y

Miscellaneous.

Bar of suits in Civil Court.

39. No suit¹ shall lie in any Civil Court to set aside or modify any assessment made under this Act.

(Notes).

1.—“ Suit. ”

(1) Scope.

This section is not applicable to a suit by an agent to recover income-tax collected from him on behalf of a principal not resident in British India, as the suit is not to set aside the assessment. 22 B. 332 (339). W

(2) Illegal assessment—Civil suit.

A person seeking a refund of income-tax illegally assessed upon him may apply to the Commissioner, i.e., it is “lawful” for him so to apply. He may legally sue in a Civil Court to recover the illegal assessment. 11 W.R. 425. X

40. All or any of the powers and duties conferred and imposed by this Act on a Collector or on a Commissioner of Division may be exercised and performed by such other officer or person as the Local Government appoints¹ in this behalf.

Exercise of powers of Collector and Commissioner.

(Note).

1.—“ By such other officer or person as the Local Government appoints.”

(1) Government Notifications.

For Notifications under this section for—

- (1) Assam, see Assam Manual of Local Rules and Orders, Ed. 1893, p. 231.
- (2) Ajmere—Merwara, see Gazette of India, 1902, Pt. II, p. 1081, and Aj. R. and O.;
- (3) Bombay, see Barmay Government Gazette, 1902, Pt. I, p. 2009; *ibid.*, 1903, Pt. I, p. 875.

1.—“By such other officer or person as the Local Government appoints”
—(Concluded).

- (4) Burma, *see* Income-tax Pamphlet, Ed. 1891, Bur. R.M., and Burma Gazette, 1902, Pt. I, p. 688, *ibid.*, 1903, Pt. I, p. 919; *ibid.*, 1904, Pt. I, pp. 149, 683; *ibid.*, 1905, Pt. I, pp. 231, 290, 304, 314, 328, 444, 764; *ibid.*, 1906, Pt. I, pp. 139, 358, 563, 630, 749, 830; *ibid.*, 1907, Pt. I, pp. 423—94;
- (5)¹ Central Provinces, *see* C.P. R. and O.; Central Provinces Gazette, 1906, Pt. III, p. 168;
- (6) Madras, *See* Mad. R. and O.;
- (7) United Provinces of Agra and Oudh, *see* U.P. R. and O. Y

(2) **Political Officer.**

For notifications investing—with powers of Collector in respect of persons residing out of British India, *see* Gazette of India, 1887, Pt. I p. 1, 465; *ibid.*, Pt. I, p. 916. Z

Obligation to furnish information respecting lodgers and employees.

41. An officer or person exercising all or any of the powers of a Collector under this Act may, by notice, require any person to furnish a list, in the prescribed form, containing, to the best of his belief,—

- (a) the name of every inmate or lodger resident in any house used by him as a dwelling-house or let by him in lodgings;
- (b) the name of every other person receiving salary or emoluments amounting to [eighty-three rupees five annas and four pies] per mensem, or [one thousand] rupees per annum, or upwards, employed in his service, whether resident in any such house as aforesaid or not; and
- (c) the place of residence of such of those persons as are not resident in any such house, and of any inmate or lodger in any such house who has a place of residence elsewhere at which he is liable under this Act to be assessed and who desires to be assessed at that place.

(Note).

Legislative changes.

The words eighty-three rupees, five annas and four pies were substituted for “forty-one rupees, ten annas and eight pies” and “one thousand” for “five hundred” by the Income-Tax (Amendment) Act, 1903 (XI of 1903), S. 2 (2). A

42. An officer or person exercising all or any of the powers aforesaid may, by notice, require any person whom he has reason to believe to be a trustee, guardian, curator, committee or agent to deliver or cause to be delivered a statement of the names of the persons for or of whom he is trustee, guardian, curator, committee or agent.

Trustees and agents to furnish information as to beneficiaries and principals.

43. An officer or person exercising all or any of the said powers may, by notice, require a trustee, guardian, curator, committee or agent, or a receiver or manager appointed by any Court in India, or a Court of Wards, Administrator General or Official Trustee, to furnish such returns of income liable to assessment under Part IV as may be prescribed.

Trustees, etc., to furnish information as to income.

44. An officer or person exercising all or any of the said powers may, at the instance of any person respecting whose assessment or the amount thereof any doubt exists, require any person to furnish such information as he deems to be necessary for the purpose of ascertaining facts relevant to the assessment or its amount.

Obligation to furnish other information.

45. A person required to furnish any information under section 41, section 42, section 43 or section 44 shall be legally bound to furnish the same in such manner and within such time as may be specified in the requisition for the information.

Sections 176 and 177 of Penal Code to apply to requisitions for information.

46. (1) A notice under this Act may be served on the person therein named either by a prepaid letter addressed to the person and registered under Part III of the Indian ^{XIV of 1866.} Post Office Act, 1866, or by the delivery or tender to him of a copy of ^{Now Act VI of 1898.} the notice.

Service of notices.

(2) If a notice is served by registered letter, it shall be presumed to have been served at the time when the letter would be delivered in the ordinary course of post, and proof that the letter was properly addressed and put into the post shall be sufficient to raise the presumption that the notice was duly served at that time.

(3) If the notice is to be served otherwise than by registered letter, the service shall, whenever it may be practicable, be on the person named in the notice, or, in the case of a firm, on some member thereof, or, in the case of a Hindu undivided family, on the manager of the joint estate of the family.

(4) But when the person, member or manager cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the serving officer shall fix the copy of the notice on the outer door of the house in which the person, firm or family therein named ordinarily resides or carries on business.

47. (1) When a company or firm has several places of business in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be the principal place of business ^{1.}

*Power to declare principal place of business or residence.

(2) When a company or firm has several places of business in the territories subject to a single Local Government, that Government may declare which of them shall, for the purposes of this Act, be deemed to be the principal place of business.

(3) When a person has several places of residence in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(4) When a person has several places of residence in the territories subject to a single Local Government, that Government may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(5) The powers given by this section may be delegated to ², ⁶ and exercised by, such officers as the Governor General in Council or the Local Government, as the case may be, appoints in this behalf.

(Notes).

1.—“Principal place of business”

Scope.

This section applies only to the case of a Company or a firm, and not to the case of an individual carrying on business. 5 C.W.N. 257. **B**

2.—“May be delegated.”

Notifications by Local Governments delegating powers given by the section.

For Notification issued by the Government of Bombay under S. 47, see Bombay Gazette, 1902, Pt., p. 2009; *ibid.*, 1903, Pt. I, p. 875. **C**

For Notification by the Government of Burma delegating to the Financial Commissioner the power conferred on the Local Government by sub-ss. (2) and (4), see Bur. R.M. **D**

For Notification by the Government of the United Provinces delegating such power to the Board of Revenue, see U.P. R. and O. **E**

48. Where a person is in respect of any period liable to the tax under this Act, he shall not in respect of that period be assessed * * * * to the capitation-tax, or the land-rate in lieu thereof, levied in British Burma ¹ under the Burma Land and Revenue Act, 1876.

Saving in favour of payers of capitation taxes.

(Notes).

Legislative changes.

The words “to the pandhari-tax levied in the Central Provinces under Act XIV of 1867 or” were repealed by Act XVI of 1902. **F**

1.—“British Burma.”

Lower Burma.

This reference to British Burma should now be read as referring to Lower Burma—See the Burma Laws Act, 1898 (XIII of 1878), S. 7, Bur. Code. **G**

THE SECOND SCHEDULE.

SOURCES OF INCOME AND RATES OF TAX.

(See Section 4.)

FIRST COLUMN.

Source of Income.

SECOND COLUMN.

Rate of Tax.

PART I.

SALARIES AND PENSIONS.

1. Any salary, annuity, pension or gratuity paid in British India to or on behalf of any person residing in British India or serving on board a ship plying to or from British Indian ports, whether on account of himself or another person.

2. Any salary, annuity, pension or gratuity paid by the Government, or by a local authority established in the exercise of the powers of the Governor General in Council in that behalf, to or on behalf of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty.

(a) If the income amounts to Rs. 2,000 per annum or Rs. 166-10-8 per mensem, or upwards—five pies in the rupee.

(b) If the income is less than Rs. 2,000 per annum or Rs. 166-10-8 per mensem—four pies in the rupee.

PART II.

PROFITS OF COMPANIES.

Profits of a company

Five pies in the rupee on the whole of the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then on the whole of the nett profits so made during the year ending on the said thirty-first day of March.

PART III.

INTEREST ON SECURITIES.

Interest becoming due on or after the first day of April, 1886, and payable in British India, on—

(a) promissory notes, debentures, stock or other securities of the Government of India (including securities of the Government of India whereon interest is payable out of British India by draft on any place in British India), or

(b) [Repealed by Act XII of 1891.]

(c) debentures or other securities for money issued by or on behalf of a local authority or company.

Five pies in the rupee on such interest, unless the owner of the security produces a certificate¹ signed by the Collector that his annual income from all sources is less than Rs. [1,000] in which case no deduction shall be made from the interest, or unless he produces a like certificate that his income from all sources is less than Rs. 2,000, in which case the rate shall be four pies in the rupee.

THE SECOND SCHEDULE.—(Concluded).

FIRST COLUMN.

SECOND COLUMN.

Source of Income.

Rate of tax.

PART IV.

OTHER SOURCES OF INCOME.

Any source of income not included in Part I, Part II or Part III of this schedule.	[(a) If the annual income is assessed at—			
	not less than Rs. 1,000 but less than Rs. 1,250	the tax shall be Rs. 20		
	" " " 1,250	" " 1,500	" " 28	
	" " " 1,500	" " 1,750	" " 35	
	" " " 1,750	" " 2,000	" " 42]	
(b) If the annual income is assessed at Rs. 2,000 or upwards—five pies in the rupee on the income.				

(Notes).

Legislative Changes.

The figure "1,000" in the second column of Part III was substituted for "500" by the Indian Income-tax (Amendment) Act, 1903 (XI of 1903), S. 2 (3).

Sub-head. (c) in the second column of Part IV was substituted by the Indian Income-tax (Amendment) Act, 1903 (XI of 1903), s. 2 (g).

I.—"Certificate".

The certificate referred to in the second column of Part III of the second schedule shall be in Form B or in Form C. See Appendix A.

THE THIRD SCHEDULE.

FORM OF PETITION.

(See Section 52.)

TO THE COLLECTOR OF

The day of 188 .

The petition of A. B. of

SHEWETH as follows—

1.—Under Act No. II of 1886, your petitioner has been assessed in the sum of rupees for the year commencing the first day of April 188 .

2.—Your petitioner's income and profits accruing and arising from [here specify petitioner's trade or other source or sources of income or profits, and the place or places at which such income or profits accrues or arise] for the year ending the day of last were rupees [as will appear from the documents of which a list is presented herewith] 1

3.—Such income and profits actually accrued and arose during a period of months and days [here state the exact number of months and days in which the income and profits accrued and arose].

4.—During the said year your petitioner had no other income or profits.

Your petitioner therefore prays that he may be assessed accordingly [or that he may be declared not to be chargeable under the said Act].

(Signed) A. B.

Form of Verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) A. B.

(Note).

1.—“As will appear from the documents of which a list is presented herewith.”

Form of petition.

These words are to be inserted if the petitioner relies on documents. The list, if the petitioner so wishes, may be presented in a sealed envelope.

APPENDIX A.

THE GOVERNMENT OF INDIA RULES.

Exemption as to liability to income-tax.

No. 2762, dated the 6th June, 1890.—In exercise of the powers conferred by Ss. 6 and 38 of Act II of 1886, the Governor General in Council is pleased, in supersession of the Notifications in the Department of Finance and Commerce—

No. 579, dated the 3rd May, 1886.

“ 2003,	“ 16th July, 1886.
“ 2633,	“ 19th August, 1886.
“ 2929,	“ 3rd September, 1886.
“ 3920,	“ 29th October, 1886.
“ 4330,	“ 25th November, 1886.
“ 4010,	“ 26th July, 1887.
“ 6911,	“ 30th December, 1887.
“ 676,	“ 8th February, 1888.
“ 1650,	“ 27th March, 1888.
“ 1703,	“ 30th “ “
“ 806,	“ 14th February, 1889.
“ 3065,	“ 20th June, 1889.

(A) to exempt from liability to the tax payable, and to assessment under the said Act—

(1) the income of persons (other than persons in the service of the Government) residing in—

- ¹ (a) (Any part of the presidency of Madras included for the time being in a scheduled district);
- (b) the Hill Tracts of Chittagong;
- (c) the Mewar States under the Khandesh Political Agency;
- (d) the Khondmals and the Mahal of Angul in Orissa;

(2) the income of Universities or other associations or bodies existing solely for educational purposes and of local authorities as defined in S. 3 of the Act provided that the exemption shall not extend to interest payable on a Government security in respect of any period (the period running to date of payment of interest from last date of payment thereof) during which a transfer of the security has been effected;

¹ Substituted by Notification No. 4877-S.R., dated 7th November, 1903, see Gazette of India, 1903, Pt I, p. 647.

(3) the official allowance which an Agent of a Prince or State in India in alliance with Her Majesty who has been duly accredited to represent the Prince or State for political purposes in any place within the limits of British India receives as such Agent in British India from the Prince or State ;

(4) any capital sum paid in commutation of the whole or a portion of a pension ;

(5) so much of the income of a person as is derived solely and directly from the production of indigo or the preparation thereof for the market : provided that nothing in this clause shall be construed to affect S. 5, sub-S. (2), of the Act with respect to the liability of an officer or servant of a person to whom this clause applies ;

(6) such portion of any person's income as is paid to any Service Fund, Mutual Benefit Fund, Friendly Society, or other legally established Association not being a company within the meaning of S. 3, sub-S. (2), of the Act, in respect of an insurance or deferred annuity on his own life or on the life of his wife in the same way as if the payment were made to an Insurance Company ;

(7) such portion of the income of any person in the service of the Government, or of any Local authority, or of any Railway Company as is paid to any Provident Fund established under the authority, or with the permission of the Government, and as is not repayable to him at his option so long as he remains in such service :

Provided that the amount of income exempted under No. (6) and No. (7), together with the amount exempted under S. 5, sub-S. (1), cl. (g) of the Act, shall not exceed one-sixth of the whole income in respect of which the person would, but for these exemptions, be liable ;

¹ (8) interest on securities of the classes indicated in Pt. III of the second schedule to the Act, which are held by, or are the property of, a Service Fund or a Friendly Society.

Explanation.—For the purposes of this exemption, a "Service Fund" is a fund established under the authority, or with the permission, of the Government for the purpose of securing deferred annuities to the subscribers, or payments to them in the event of their resignation or dismissal from the service in which they are employed ; or provision for their wives or children after their death, or payments to their estate or their nominees upon their death, to which the servants of the Government or of a Local Authority or of a Railway Company are alone admissible as subscribers or members, and the funds of which are either deposited with the Government or invested in Government securities ; and a "Friendly Society" is a mutual association established for the purpose of securing deferred annuities to the subscribers, or provision for their wives or children after their death, or payments to their estate or their nominees upon their death, in which the payment which may be made in respect of any one nominee does not exceed either a single payment of Rs. 3,000 or an annual payment of Rs. 500.

Note.—The East Indian Railway Savings Bank shall be deemed to be a "Service Fund," within the meaning of this exemption.

(B) to rule—

(9) that a claim to exemption preferred under S. 5, sub-S. (1), cl. (g) of the Act on that portion of income taxable under Pt. I of the Second Schedule of the Act which is paid as a premium to an Insurance Company shall not be entertained if the claim is made after the expiration of six months from the last day of the financial year during which the premium was paid ;

¹ Substituted by Notification, No. 2180 S.R., dated the 23rd April, 1901, see Gazette of India, Pt. I, p. 259.

(10) that officers and men of the Indian Marine Service shall not for the purposes of S. 5, sub-S. (1), cl. (i) of the Act be treated as belonging to Her Majesty's Indian Forces; and

(11) that for the purposes of the Act—

(a) the tentage allowance included in the pay and Indian allowances of an officer in military employ under Art. 748 of the Army Regulations, India, Vol. I, Pt. I, shall be deemed to be salary unless the officer has provided and has in his possession the camp equipage of his rank in a serviceable condition;

(b) the horse allowance shown as included in the consolidated or staff pay of the several appointments specified in Art. 91 of the Army Regulations, India, Vol. I, Pt. I, shall be deemed to be salary, unless the officer has provided and actually maintains the number of *bona fide* chargers prescribed for his rank.

(See Gazette of India, 1890, Pt. I, p. 408).

Exemption from income-tax of salary of soldiers whose salaries were previously exempted when deputed to plague or famine duty and when under Rs. 500-a month.

No. 4812-S. R., dated the 3rd November, 1898.—In exercise of the power conferred by S. 6 of Act II of 1886, the Governor General in Council is pleased to exempt from liability to the tax payable under that Act the salary of any officer, warrant officer, non-commissioned officer or private of Her Majesty's forces or of Her Majesty's Indian forces who has been or may be deputed from employment in which his salary was exempted under S. 5 (1) (i) of the said Act to plague or famine duty under the Civil Department and whose salary does not exceed five hundred rupees per mensem.

(See Gazette of India, 1898, Pt. 1, p. 1086).

Political Officers invested with powers of Collector.

No. 4135-I., dated the 16th September, 1897.—In exercise of the powers conferred by S. 40 of Act II of 1886 (the Income Tax Act, 1886), the Governor General in Council is pleased to invest each of the Political Officers named below with the powers of a Collector under the said Act for the purpose of granting certificates in respect of interest on Government securities in Forms B, C, and D, prescribed in r. 9 of the Notification issued by the Government of India, in the Department of Finance and Commerce, No. 593, dated the 5th February, 1886, when such securities are held by persons residing outside of British India:—

- (1) The Resident in Nepal.
- (2) The Resident in Kashmir.
- (3) The Political Resident in Turkish Arabia.
- (4) The First Assistant to the Resident at Hyderabad.
- (5) The Assistant to the Resident in Mysore.
- ¹ (5-A) The Resident at Indore.
- ¹ (5-B) The Political Agent in Malwa.
- (6) The First Assistant to the Agent to the Governor General in Central India.
- (7) The Resident at Gwalior.
- (8) The Political Agent in Bhopal.
- (9) The Political Agent in Baghelkhand and Superintendent of the Rewah State.*

¹ Added by Notification No. 5020-I.B. dated the 6th November, 1903, see Gazette of India, 1903, Pt. I, p. 957.

* The Superintendancy at Rewah has now been abolished.

- (10) The Political Agent in Bundelkhand.
- (11) The Political Agent in Bhopawar.
- (12) The First Assistant to the Agent to the Governor General in Rajputana.
- ¹ (13) The Resident in Jaipur.
- (14) The Resident in the Western States of Rajputana.
- (15) The Resident in Meywar.
- (16) The Political Agent in Ulwar.
- (17) The Political Agent in Kotah.
- ² (18) The Political Agent in Jhallawar.
- (19) The Political Agent in Bikanir.
- (20) The Political Agent in Harowtee and Tonk.
- ³ (21) The Political Agent in the Eastern States of Rajputana.
- (22) The First Assistant to the Agent to the Governor General at Baroda.
- (23) The First Assistant to the Agent to the Governor General in Baluchistan.
- ⁴ (24) The Political Agent, Quetta.
- ⁴ (25) The Political Agent, Zhob.
- ⁴ (26) The Political Agent, Kalat, Bolan Pass (and Nuski Railway District).
- ⁴ (27) The Political Agent in South Eastern Baluchistan.
- ⁴ (28) [The Political Agent, Kohlu, Nasirabad and Railway District].⁵
- ² (29) The First Assistant to the Political Resident in the Persian Gulf.
- (30) The Political Agent at Muscat.

(See Gazette of India, 1887, Pt. I, p. 465).

Rules under the Act.

No. 2763, dated the 6th June, 1890.—In exercise of the powers conferred upon him by Act II of 1886, and of all other powers enabling him in this behalf, and in supersession of the Notifications in the Department of Finance and Commerce—

No. 593, dated the 5th February, 1886.

- | | |
|---------|-------------------------|
| " 674, | " 7th May, 1886. |
| " 2685, | " 19th August, 1886. |
| " 3438, | " 30th September, 1886. |
| " 2308, | " 5th May, 1887. |
| " 4678, | " 31st August, 1887. |

1. the Governor General in Council is pleased to make the following rules under the said Act:—

1. The time within which amounts deducted from salary, annuity, pension, or gratuity paid by a Local Authority under S. 8, Sub-s. (1) of the Act must be paid to the credit

¹ Substituted by Notification No. 1269-I.B., dated the 6th November, 1903, see Gazette of India, 1889, pt. I, p. 172.

² This Agency is now merged in the Khotah Agency.

³ Substituted by Notification No. 1269—I., dated 22nd March, 1889, see Gazette of India, 1889, pt. 1, p. 172.

⁴ Substituted by Notification No. 1479-E., dated the 17th July, 1890, see Gazette of India, 1890, Pt. I, p. 530.

⁵ Added and substituted by Notification No. 3074-F. B., dated the 16th October, 1906, see Gazette of India, 1903, Pt. I, p. 916.

of the Government of India, is fixed at one week from the date of payment of the salary, pension, annuity, or gratuity. The payment to the credit of the Government shall be made by remitting the amount to the Collector with a statement giving the following particulars for each person from whom the tax has been realised :—

- (1) Name.
- (2) Period for which the salary, pension, or annuity has been paid.
- (3) Amount of salary, pension, annuity, or gratuity paid.
- (4) Amount of tax.

2. The return required by S. 10 of the Act shall be in Form A hereto appended.

The name of any person who is receiving, at the date of the return prescribed by S. 10 of the Act, a salary, pension, or annuity which does not amount to Rs. 300 per annum, or has received during the year ending on that date a gratuity which does not amount to that sum, need not be shown in the return.

3. Any sums, such as payments to regimental mess or band funds or the like compulsorily stopped from salary by the orders, or with the approval, of the Government, shall be deducted from the salary previous to assessment.

A portion of salary withheld in pursuance of an order of a Court is not a sum compulsorily stopped from salary within the meaning of this rule.

4. When a deduction is made from the amount of salary, pension, or annuity liable to assessment on account of a payment made to a Life Insurance Company, the sum deducted shall, if the premium is payable in sterling, be the actual cost of remittance as stated by the assessee; or, if the assessee is unable to state such actual cost, the equivalent in rupees of the sterling payment calculated at the official rate of exchange for the year in which the deduction is made.

5. A deduction such as is mentioned in the preceding rule must be supported either—

- (1) by the original receipt of the Insurance Company; or
- (2) (in the case of a deduction claimed by a servant of the Government or of a Local authority) by a copy of the same presented together with the original, to the officer who pays the salary, pension or annuity, and attested by that officer who should after such attestation return the original; or
- (3) by a duplicate receipt given by the Insurance Company; or
- (4) by a certificate of payment given by the Insurance Company.

In cases (1), (3), and (4), the receipt or certificate should be returned as soon as the fact of payment is admitted in the due course of audit.

Where the Collector is satisfied that none of the above prescribed documents can be produced without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, he may accept such other proof of payment of the premium as he may deem sufficient.

6. The amounts exempted from the tax by S. 5, sub-s. (1), cl. (g), of the Act, and referred to in r. 4 of these rules, shall not be deducted from income for the purpose of determining whether the income is liable to the tax, or of determining under Pt. I of the Second Schedule of the Act the rate at which the tax shall be levied.

7. The amount to be assessed under S. 21, sub-s. (1), of the Act on account of a building occupied by the owner thereof shall not in any case exceed 10 per cent. of the aggregate income of the owner derived from all sources. It must not, however, be understood from this that a maximum of 10 per cent. of the aggregate income of the owner is to be assumed in every case as equivalent to the letting value of his house. The letting-value should in all cases be ascertained on the best data available in view of the circumstances of the locality in which the house is situated.

8. After the close of the year of assessment each Accountant-General or other auditing officer shall submit return No. 1, in the form hereto appended to such officer as the Local Government may direct.

9. The certificates referred to in the second column of Pt. III of the Second Schedule of the Act shall be in Form B or in Form C, hereto appended.

10. Any claim under S. 5, sub-S. (1), cl. (e), of the Act to exemption from the levy of the tax on the interest of securities employed solely for religious or public charitable purposes within the meaning of that clause must be supported by a certificate from the Collector, which shall be in Form D hereto appended.

11. In the case of securities, the interest on which is payable by the Government of India, the amount deducted on account of the tax under S. 13, sub-S. (1), of the Act shall be paid to the credit of the Government on the same day as the payment of the interest is made.

12. In the case of securities, the interest on which is not payable by the Government of India, the amount so deducted shall be paid to the credit of the Government within one week from the date on which interest is paid. The person deducting the amount should pay it to the credit of the Government by remitting the amount to the Collector, with a statement showing the following particulars:—

- (1) Name of owner.
- (2) Description of security.
- (3) Number of security.
- (4) Date of security.
- (5) Amount of security.
- (6) Period for which interest is drawn.
- (7) Amount of interest.
- (8) Amount of tax.

13. After the close of the year of assessment, each Accountant-General and Comptroller shall submit Return No. M, in the form hereto appended to such officer as the Local Government may direct.

14. In calculating the amount of tax payable, the amount due on a fraction of a rupee shall be neglected. Thus the tax to be realised on a monthly salary of Rs. 166-10-8 is Rs. 4-5-2 only.

15. All public servants are forbidden to make public or disclose, except for the purpose of the working of the Act, any information contained in documents delivered or produced with respect to assessments under Pt. IV of the second Schedule of the Act, and any public servant committing a breach of this rule shall be deemed to have committed an offence under S. 166 of the Indian Penal Code.

XLV of 1860.

All public servants are further enjoined to be most careful to regulate their proceedings as far as practicable in such manner as to prevent information which should be kept secret from becoming known. It should be noted that information of this nature is to be withheld by officers administering the Act from persons in the employment of assessors.

16. Power to make further rules is hereby delegated to the several Local Governments, and no rules already made by Local Governments under authority given by the Governor-General in Council shall be deemed to be cancelled by the supersession of any of the notifications quoted in the present Notification.

17. Each Local Government will prescribe forms of registers to be maintained by Collectors and others for the purpose of showing the demand and collections of the tax, the various classes of incomes assessed and the working of the several provisions of the Act.

18 and 19. Rep. by No. 3217-S.R., dated the 12th June, 1901.

(See Gazette of India, 1901, Pt. I, p. 394).

THE INDIAN INCOME-TAX ACT, 1866.

TABLE OF CASES NOTED IN THIS ACT.

	I.L.R. Bombay Series.	PAGE
22 B 332	Plunket v. Narayan Parashram Tulla ...	21
	I.L.R. Calcutta Series.	
4 C 576 (580)	Surnomoyee Dabee v. Koomar Puresh Narain Roy. •	7
7 C 647	Lokenath Mullick v. Odooyhurn Mullick ...	6
23 C 950 (P G)	Ali Khan Bahadur v. Indar Parshad ...	20
26 C 281	Jadobram Dey v. Bulloram Dey ...	30
27 C 674	The Secretary of State for India in Council v. Mohiuddin Ahmad ...	9, 11
28 C 637	Umed Rasul Shaha Fakir v. Anath Bandhu Chowdhuri ...	4, 11
34 C 257 (268)	Manindra Chandra Nandi v. Secretary of State for India ...	4, 9, 8
35 C 82 (F B)	Secretary of State for India v. Karuna Kanta Chowdhry ...	8
	I.L.R. Madras Series.	
26 M 230 (233)	Kadir Mohideen Marakkayar v. Muthukrishna Ayyar ...	26
31 M 35	Raghavan v. Alamelu Ammal ...	17
32 M 62	Venkatachella Chettiar v. Sampathu Chettiar ...	17, 23, 24, 30
	North West Provinces High Court Reports.	
2 N W P 113	Qusen v. Cheit Ram ...	27, 28
	Bombay High Court Reports.	
7 B H C R 76 (Cr)	Reg v. Sangapa Bin Bashiapa ...	28
8 B H C R Eq. 21.	--- v. Dayalji Endarji ...	29
	Ratanlal's Unreported Criminal Cases.	
Rat Un Cr C 37	Reg v. Tapee Poonja ...	28
	Calcutta Law Journal.	
5 C L J 148 (156, 173, 174)	Manindra Chandra Nandi v. Secretary of State India in Council ...	4, 7, 8, 9, 11
6 C L J 342	The Secretary of State for India in Council v. Karuna Kant Chowdhry ...	8
	Calcutta Weekly Notes.	
5 C W N 257	Hadjee Ajam Golam Hossein v. The Secretary of State for India in Council ...	34
6 C W N 128 (130).	Umed Rasul Saha v. Anath Bundhu Chowdhry ...	4, 8, 11
11 C W N 1053	The Secretary of State for India in Council v. Karuna Kanta Chowdhry ...	8
	Sutherland's Weekly Reporter.	
6 W R 252	Jowahir Loll v. Tekeit Pookurum Singh ...	20
11 W R 425	Collector of Fureedpore v. Goroo Doss Roy ...	31
12 W R 70 (Cr)	Queen v. Nodiar Chand Koondoo ...	28
14 W R 71 (Cr)	--- v. Mudhoo Dutt ...	28
24 W R 173	Greedharee Singh v. Mussamat Fooljhuree Koor... ..	20

TABLE OF CASES.

	Madras High Court Reports.	PAGE
5 M H C R 336	Mooneappa Oodain and Subbroya Oodain ...	23, 29
	Madras Law Journal.	
12 M L J 368	Kadir Mohideen Marakkayar v. Muthukrishna Ayyar ...	26
19 M L J 263	Venkatachella Chettiar v. Sampathu Chettiar ...	17, 23, 24, 30
	Madras Law Times.	
3 M L T 111	Raghavan v. Alamelu Ammal ...	17
4 M L T 317	Venkatachella Chettiar v. Sampathu Chettiar ...	23, 24, 30
4 M L T 417	Granthi Subbiah Chetty v. Bommaraju Bahadur Deva Maharjulam Garu ...	17
	Weir's Criminal Rulings.	
1 Weir 782	<i>In re</i> Chidambara Aiyan ...	23, 29
	Punjab Record.	
29 P R 1868 (Cr)...	The Crown v. Kingcote ...	28
7 P R 1870 (Cr) ...	Rampershad v. The Crown ...	23, 29
41 P R 1905 (Cr) ...	King-Emperor v. Rup Singh ...	23, 29
	Punjab Law Reporter.	
187 P L R 1905 ...	The Crown v. Rup Singh ...	23
	Criminal Law Journal.	
3 Cr L J 128	Emperor v. Rup Singh ...	23
	Indian Appeals.	
23 I A 92	Nawab Mirza Ali Kadar Bahadur v. Indar Parshad	20
	Indian Cases.	
1 Ind Cas 705	Venkatachella Chettiar v. Sampathu Chettiar ...	17, 23, 24, 30
	Miscellaneous.	
(1899) 2 Q B 158		
(164)	Attorney v. Carlton Bank ...	4
(1881) 6 A C 315		
(335)	Coltness Iron Co. v. Black ...	8
(1878) 3 A C 473		
(478)	Cox v. Rabbits ...	4
(1858) 3 H & N 769...	Foley v. Fletcher ...	8
3 Camp 337	Lee v. Birrel ...	30
(1897) A C 145 (152).	Lord Advocate v. Fleming ...	4
(1879) 4 A C 197		
(202)	Pryce v. Monmouthshire Canal and Ry. Cos. ...	4
(1893) 55 Fed Rep		
743 (800)	Raynolds v. Hamia ...	9
(1847) 10 Q B 178...	Reg v. Westbrook and Reg v. Everist ...	8
2nd Madras Ses-		
sions (1863)	— v. Yakatazkhan ...	30
(1903) A C 299	Secretary of State v. Sooble ...	8
(1882) 51 L J Ch		
398	Sir George Jessel <i>In re</i> Huggins ...	9
21 A M St. Rep 932.	<i>In re</i> Woodburn's Estate ...	9
(1881) 138 P C 606.	_____	9

THE INDIAN INCOME TAX ACT, 1886.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S. in Brevier Roman denotes the section.

A

Accounts, Power to require officers of companies to produce, S. 12, **16**.

Act, Income tax, Short title, *A*, **3**.

„ *Legislative papers*, *B*, **3**.

„ *Rules of Government of India*, *C*, **3**.

„ *Object of the Act*, *D*, **3**.

„ *Scope of the Act*, *E*, **4**.

„ *Construction of the Act*, *F*—*J*, **4**.

„ *Machinery of assessment and appeal*, *F*, **4**.

Extent and commencement of this, S. 1, **5**.

Places to which this, is extended, *L*, *M*, **5**.

Administrators-General, Chargeable under Part IV *re* income officially in their possession S. 22, **21**.

Agents, Non-residents to be charged in names of their, S. 21, **21**.

When as such, assessed under Part. IV., S. 23, **21**.

to furnish information as to principals, S. 42, **32**.

Agreement, between the Collector and companies or private employers, *B*, **15**.

for composition, S. 31, **26**.

Agriculture, Incomes derived from—Exemption from taxation, *J*, **11**.

Amendment, of assessment, S. 23, **27**.

Annual return, by principal officer of company or association, S. 10, **15**.

Form of return, *C*, **15**.

Appeal, Conviction, *C*, **28**.

Conviction when cannot be reserved, *D*, **28**.

Assessment, Machinery of, and appeal, *K*, **4**.

Collector to determine persons chargeable, S. 14, **17**.

Mode of making, S. 15, **17**.

Fraction of rupees to be neglected, *H*, **17**.

List of income under two thousand rupees, S. 16, **18**.

Notices to persons with incomes of two thousand rupees and upwards, S. 17, **19, 20**.

Receivers, managers, Court of Wards, Administrators-General and Official Trustees, chargeable under Part IV *re* income officially in their possession, S. 22, **21**.

Revision of, Petition to Collector against assessment under Part IV, S. 25, **22, 23**.

Hearing of petition, S. 26, **23**.

Petition to Commissioner for revision, S. 27, **24**.

Power to summon witnesses etc., S. 28, **24**.

*Assessment—(Concluded).*Amendment of, S. 33, **27**.Illegal—Jurisdiction of Criminal Courts, *F*, **28**.Documents—Disclosures prohibited, *N, O*, **30**.Illegal,—Civil suit, *X*, **31**.Bar of suit to modify in Civil Court, S. 39, **31, 32**.*Assessment and Collection*, Salaries and Pensions, Ss. 7—10, **13—15**.Profits of Companies, Ss. 11, 12, **15, 16**.Interest on securities, S. 13, **16, 17**.Other sources of income, Ss. 14—24, **17—22**.*Association*, Annual return by principal officer of company or, S. 10, **15**.**B***Bar*, of suit to modify assessment in Civil Court, S. 39, **31, 32**.*Beneficiaries*, Trustees to furnish information as to, S. 42, **32**.*Bombay*, Rules made under cl. 4, S. 30, *Y*, **26**.*British India*, meaning of—Statute 21 and 22 Vic. C. 106, S. 2, **5**.**C***Capitation taxes*, Saving in favour of payers of, S. 48, **34**.*Certificate*, Claim for exemption, *P*, **12**.*Civil Court*, Bar of suits to modify assessment in Civil Court, S. 39, **31**.*Collector*, Meaning, S. 2, **6**.Political officers invested with powers of, *S*, **7**.to determine persons chargeable, S. 14, **17**.Orders of—Privilege—S. 124, Evidence Act, *F*, **17**.Petition to, against assessment under Part IV, S. 25, **22, 23**.hearing objections under S. 25—Revenue Court—Judicial proceedings—Cr. P. C., 1898, S. 476, *U*, **23**.Orders of—Privilege, *Y*, **23**.Power to summon witnesses, etc., S. 28, **24**.Documents produced before—Privilege—Evidence Act, S. 124, *W*, **24**.Prosecution under S. 36 to be at instance of, S. 36, **29**.Exercise of powers of, and Commissioner, S. 40, **31**.*Commencement*, Extent and, of this Act, S. 1, **5**.*Commissioner*, Petition to, for revision, S. 27, **24**.Power to summon witnesses, etc., S. 28, **24**.Exercise of powers of Collector and Commissioner, S. 40, **31**.*Committees*, of incapacitated persons to be charged, under Part IV, S. 20, **21**.When as such, assessed under Part IV, S. 23, **21**.*Companies*, Mode of payment of income-tax in case of servants and pensioners of companies and private employers, S. 9, **14, 15**.Agreement between the Collector and, or private employers, *B*, **15**.*Company*, Meaning of, S. 2, **5**.Annual return by principal officer of, or association, S. 10, **15**.*Composition*, Agreements for composition, S. 31, **26**.*Construction*, of the Act, *F—J*, **4**.*Contract Act*, Ss. 69 and 70—Compulsory payment of income-tax payable by another, *G*, **17**.*Conviction*, Appeal, *C*, **28**.when cannot be reserved—Appeal, *E*, **28**.*Court Fees Act*, Petition, *Q*, **22, 23**.

- Court of Wards*, Chargeable under Part IV *re* income officially in their possession, S. 22, 21.
Criminal Courts, Jurisdiction of—Illegal assessment, F, 28.
Cr. P. Ct 1898, S. 476—Collector, hearing objections under the section—Revenue Court—Judicial proceedings, U, 23.
Curator, When as such, assessed under Part IV, S. 23, 21.

D

- Declaration*, False statement in, S. 35, 28.
Deduction, for what purposes to be made, S, 12.
 Premium payable in sterling, T, 12.
 on account of insurance—Proof, U, 12, 13.
Default, Imprisonment in, of payment of fine, H, 28.
Defaulter, Scope of the term, S. 2, 6.
Definition, of Local authority, S. 2, 5.
 „ Company „ „
 „ Prescribed „ „
 „ Salary „ 6.
 „ Income „ „
 „ Magistrate „ „
 „ person „ „
 „ defaulter „ „
 „ Collector „ „
 „ Principal officer „ „
 „ Part „ „

- Delegation of powers*, Rules, U, 31.
Disclosure, prohibited—Assessments—Documents, N, O, 30.
Documents, produced before Collector—Privilege—Evidence Act, S. 124, W, 24.
Double taxation, Income-tax and cesses, U, 7.

E

- Educational endowments*, Scope of the cl. (e), S. 5, N, 11.
Employees, Obligation to furnish information respecting, S. 41, 32.
Estoppel, Petitions to Income tax office, N, 20.
Evidence Act, Ss. 123, 162—Return submitted to Income Tax Collector, S, 30.
 S. 124—Orders of Collector—Privilege—F, 17.
 S. 124 —Documents produced before Collector—Privilege, W, 24.
Exemption, from taxation—Limitation, R, 12.
 Power to make, S. 6, 13.
 The Government of India Rules—as to liability to income-tax. Appendix, A, 38—40.
Extent, and commencement of this Act, S. 1, 5.
 Places to which this Act is extended, L—N, 5.

F

- Failure*, to make payments of Income-tax or deliver returns or statements, S. 34, 27.
 To pay tax in time—Subsequent payment—Effect, B, 27.
False statement, Objection to assessment of income tax—Penal Code, S. 193, S, 23.
 before Tahsildar, T, 23.
 in declaration, S. 35, 28.
 Income tax proceedings—Judicial proceedings, J, K, 29.
Fine, Imprisonment in default of payment of, H, 28.

G

Government notifications, under S. 40 of this Act, **31, 32.**

Government officials, Mode of payment of tax in case of, S. 7, **13.**

Government of India, The, Rules—Exemption as to liability to income-tax. Appendix A, **38—40.**

Rules by, under this Act, **41, 42.**

Governor-General in Council, Power to make exemptions, S. 6, **13.**

Power to make rules, S. 38, **29—31.**

Power to declare principal place of business or residence, S. 47, **33, 34**

Guardians, to be charged under Part IV, S. 20, **21.**

When, as such, assessed under Part IV, S. 23, **21.**

H

Horse allowance, when deemed to be salary, R, **7.**

I

Imprisonment, in default of payment of fine, H, **28.**

Income, Meaning of. S. 2, **6.**

s, liable to the tax, S. 4, **7.**

Term, defined, X, **8.**

Annuity representing capital, whether can be taxed as Z, **8.**

Royalty from mines, C, **9.**

List of incomes under two thousand rupees, S. 16, **18.**

Notices to persons with, of two thousand rupees and upwards, S. 17, **19, 20.**

Trustees etc., to furnish information as to, S. 43, **33.**

Income-tax, nature of—Road cess, T, **7.**

Double taxation—and cesses, U, **7.**

Principal debt repayable by periodical instalments, none of the instalments chargeable with, **7, 8.**

Power to make exemptions, S. 6, **43.**

Mode of payment in case of Government officials and pensioners, S. 7, **13.**

Mode of payment of, in case of servants and pensioners of local authorities, S. 8, **14.**

Sajjadanashin of Sasseram Khankah, whether liable to, G, **9.**

Exceptions, S. 5, **9—13.**

Profits of *melu*, when exempted and when not exempted from, I, **11.**

On profits of Companies, Ss. 11, 12, **15, 16.**

Mode of payment of, in case of servants and pensioners of companies and private employers, S. 9, 14, **15.**

Collector to determine persons chargeable, S. 14, **17.**

Compulsory payment of, payable by another—Contract Act, Ss. 69 & 70, G, **17.**

Mode of making assessment, S. 15, **17.**

List of incomes under two thousand rupees, S. 16, **18.**

Time and place of payment, S. 19, **20.**

Trustees, guardians and committees of incapacitated persons to be charged, S. 20, **21.**

Non-resident to be charged, in names of their agents, S. 21, **21.**

Receivers, managers, Court of Wards, Administrators-General and Official Trustees, S. 22, **21.**

Provision for tax on occupying owners, S. 24, **22.**

Petition to Collector against assessment under Part IV, S. 25, **22, 23.**

Objection to assessment of—False statement—Penal Code, S. 1, **93; S. 23.**

Petition to Commissioner for revision, S. 27, **24.**

Tax when payable, S. 29, **24.**

Income-tax—(Concluded).

- Mode and time of recovery, S. 30, 24.
- Failure to make payments or deliver returns or statements, S. 34, 27.
- Failure to pay, in time—Subsequent payment—Effect, B, 27.
- proceedings—Judicial proceedings—False statement, J, K, 29.
- The Government of India Rules—Exemption as to liability to income-tax, Appendix A, 38—40.
- Income Tax Collectors*, Return submitted to,—Evidence Act, Ss. 123, 162, S, 30.
- Income-tax office*, Petitions to—Estoppel, N, 20.
- Income-tax papers*, Production of in Court—Privilege, P—R, 30.
- Production of, before Court—Privilege—Rule 16, T, 30.
- Income-tax return*, Certified copies—Admissibility, K, 20.
- Evidentiary value, L, 20.
- Effect of on *onus*, M, 20.
- Information*, Trustees etc., to furnish, as to income, S. 43, 33.
- Obligation to furnish other, S. 44, 33.
- Ss. 176 & 177 of Penal Code to apply to requisitions for information, S. 45, 33.
- Insurance*, Deduction on account of—Proof, U, 12, 13.
- Interest on securities*, Mode of payment of tax on interest on securities, S. 13, 16, 17.

J

- Judicial proceedings*, False statement—Income tax proceedings, J, K, 29.
- Jurisdiction*, of Criminal Courts—Illegal assessment, P, 28.
- Magistrate of second class, G, 28.

L

- Local authorities*, Mode of payment in case of servants and pensioners of, S. 8, 14.
- Local authority*, Meaning of, S. 2, 5.
- Local Government*, Powers to modify ordinary procedure in special cases, S. 18, 19, 20.
- Rules made by, J, 20.
- Notifications by, delegating powers given by S. 47 of this Act, C—E, 34.
- Lodgers*, Obligation to furnish information respecting, S. 41, 32.

M

- Machinery*, of assessment and appeal, K, 4.
- Magistrate*, Meaning of, S. 2, 6.
- Magistrate of second class*, Jurisdiction, G, 28.
- Managers*, chargeable under Part IV *re* income officially in their possession, S. 22, 21.
- Mineral lease*, Nature of, A, B, 8.
- Mode of payment*, of tax in case of Government officials and pensioners, S. 7, 13.
- of income-tax, in case of servants and pensioners of local authorities, S. 8, 14.
- Deduction from salary—Time within which amount to be paid to the Government of India, Z, 14.
- Payment to credit of Government—Form, A, 14.
- of income tax in case of servants and pensioners of companies and private employers, S. 9, 14, 15.
- of tax on interest on securities, S. 13, 16, 17.

N

- *Non-residents*, to be charged in names of their agents, S. 21, 21.
- Notices*, to persons with incomes of two thousand rupees and upwards, S. 17, 19, 20.
- Service of, S. 46, 33.
- Notification*, as to exemption from tax and assessment, M, 30.
- by Local Governments delegating powers given by S. 47 of this Act, C—E, 34.

O

- Objection*, to assessment of income-tax—False statement, *L*, 29.
Obligation, to furnish information respecting lodgers and employees, S. 41, 32.
 to furnish other information, S. 44, 33.
Occupying owners, Provision for tax on, S. 24, 22.
Officer, An, or servant is not exempt from taxation under this Act by reason only of the income of his employer being exempt therefrom under S. 5 of this Act, S. 5, 10, 13.
Official trustees, Chargeable under Part IV *re* income officially in their possession, S. 22, 21.
Orders, of Collector—Privilege, *Y*, 23.

P

- Part*, meaning of, S. 2, 6.
Payment, Time and place of, of income tax, S. 19, 20.
Penal Code, Ss. 176 & 177 of, to apply to requisitions for information, S. 45, 33.
 S. 177—False statement in declaration, S. 35, 28.
 S. 193—Objection to assessment of income-tax—False statement, S. 23.
 Ss. 193 and 228 of, to apply to proceedings, under S. 12 or Chap. IV of this Act, S. 37, 29.
Penalties, Failure to make payments or deliver returns or statements, S. 34, 27, 28.
 False statement in declaration, S. 35, 28.
 Prosecution under S. 36 to be at instance of Collector, S. 36, 29.
Pensioners, Mode of payment of tax in case of, S. 7, 13.
Person, Scope of the term, S. 2, 6.
Petitions, to income-tax office—Estoppel, *N*, 20.
 Court, Fee, *Q*, 22, 23.
 to Collector against assessment under Part IV, S. 25, 22, 23.
 Hearing of, S. 26, 23.
 to Commissioners for revision, S. 27, 24.
Political Officers, invested with powers of Collector, S. 7.
 for notifications investing—with powers of Collector in respect of persons residing out of British India, *Z*, 32.
 invested with powers of Collector, see Notification at pp. 40, 41.
Power, to modify ordinary procedure in special cases, S. 18, 19, 20.
 to retain duties charged on trustees, etc. S. 23, 21.
 to summon witnesses, etc., S. 27, 24.
 Exercise of, of Collector and Commissioner, S. 40, 31.
 to declare principal place of business or residence, S. 47, 33, 34.
 exerciseable from time to time, S. 50, 35.
Premium, Payable in sterling—Deduction in assessing tax, *T*, 12.
Principal officer, How used, S. 2, 6.
 Annual return by, of company or association, S. 10, 15.
Principals, Agents to furnish information as to principals S. 42, 32.
Private employers, Mode of payment of income tax in case of servants and pensioners of companies and private employers, S. 9, 14, 15.
 Agreement between the Collector and Companies or, *B*, 15.
Privilege, Orders of Collector, *Y*, 23.
 Documents produced before Collector—Evidence Act, S. 124, *W*, 24.
 Production of Income-tax papers in Court—Privilege, *P—R*, 30.
 Rule 16—Production of Income-tax papers before Court, *T*, 30.
Procedure, Power to modify ordinary, in special cases, S. 18, 19, 20.
Production, of Income-tax papers in Court—Privilege, *P—R*, 30.

- Profits*, Annual statements of net, S. 11, **15**.
Profits of Companies, Annual statement of net profits, S. 11, **15**.
 Power to require officers of companies to produce accounts, S. 12, **16**.
Proof, Deduction on account of insurance, U, **12, 13**.
Prosecution, under S. 36, to be at instance of Collector, S. 36, **29**.
 under S. 34—Collector's duty to institute prosecution, I, **29**.

R

- Receipt*, and their contents, S. 32, **26**.
Receivers, Chargeable under Part IV *re* income officially in their possession, S. 22, **21**.
Repeal, of Enactments, S. 2, **5**.
Returns, Failure to deliver, or statements, S. 34, **27**.
 submitted to Income Tax Collector—Evidence Act, Ss. 123, 162, S, **30**.
Revision, of assessment—Petition to Collector against assessment under Part IV, S. 25, **22, 23**.
 Hearing of petition, S. 26, **23**.
 Petition to Commissioner for, **27, 24**.
 Power to summon witnesses etc., S. 28, **24**.
Road cess, Income-tax nature of, T, **7**.
Royalty, from mines—Income, C, **9**.
Rules, made by Local Governments, J, **29**.
 made under cl. 4, S. 30, Bombay, Y, **26**.
 Governor General-in Council may make, S. 33, **29—31**.
 Notification as to exemption from tax and assessment, M, **30**.
 by Local Government under S. 38 of this Act, V, **31**.
 The Government of India Exemption as to liability to income-tax, Appendix A, **38—40**.
 by Government of India under this Act, **41, 42**.

S

- Sajjadnashin*, Money used by, for his maintenances, not salary, I, **6**.
 of Sasseram Khankah, whether liable to income-tax, G, **9**.
Salaries and Pensions, Mode of payment of tax in case of Government Officials and pensioners, S. 7, **13**.
 Mode of payment in case of servants and pensioners of local authorities, S. 8, **14**.
 Mode of payment in case of servants and pensioners of Companies and private employers, S. 9, **14, 15**.
 Annual return by principal officer of Company or association, S. 10, **15**.
Salary, Scope of the term, S. 2, **6**.
 Money used by *Sajjadnashin* for his maintenances not, P, **6**.
 Tentage allowance, whether, Q, **7**.
 Horse allowance when deemed to be salary, R, **7**.
Saving, in favour of payers of capitation taxes, S. 48, **34**.
Schedule, The First—Enactments repealed, O, **35**.
 The Second—Sources of income and Rates of Tax, **36, 37**.
 The Third Form of Petition, **37**.
Securities, Interests payable by Government, D, **16**.
 Mode of payment of tax on interest on, S. 13, **16, 17**.
 Interest not payable by Government, E, **16, 17**.
Servant, An officer or, is not exempt from taxation under this Act by reason only of the income of his employer being exempt therefrom under S. 5 of this Act, S. 5, **10—13**.

Servants and pensioners. Mode of payment of income-tax in case of servants and pensioners of companies and private employers, S. 9, 14, 15.

Service, of notices, S. 46, 33.

Statements, Failure to deliver returns or, S. 34, 27.

Statute 21 and 22 Vic. C., 106, Territories vested by, British India, S. 2, 5.

Suit, Bar of, to modify assessment, in Civil Court, S. 39, 31, 32.

T

Tax, Incomes liable to the tax, S. 4, 7.

Exceptions, S. 5, 9—13.

Notification as to exemption from, and assessment, *M*, 30.

Saving in favour of capitation, S. 48, 34; Indemnity, S. 49, 35.

Tentage allowance, whether salary, *Q*, 7.

Time, and place of payment of income-tax, S. 19, 20.

Trustees, to be charged, under Part IV, S. 20, 21.

When, as such, assessed under Part. IV, S. 22, 21.

to furnish information as to beneficiaries, S. 42, 32.

etc., to furnish information as to income, S. 43, 33.

W

Words and phrases, Meaning of Local authority, S. 2, 5.

„	Company	„
„	Prescribed	„ „
„	Salary	S. 2, 6.
„	income	„ „
„	Magistrate	„ „

Meaning of person, S. 2, 6.

„ defaulter „ „

„ Collector „ „

„ principal officer „

„ part „ „

Meaning of, "Owner," S. 24, 22.

THE CROWN GRANTS ACT, 1895

(ACT XV OF 1895.)

(WITH THE CASE-LAW THEREON)

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6

7

THE CROWN GRANTS ACT ¹.

(ACT XV of 1895.)

[10th October, 1895.]

An Act to explain the Transfer of Property Act, 1882, so far as relates to grants from the Crown, and to remove certain doubts as to the powers of the Crown in relation to such grants.

WHEREAS doubts have arisen as to the extent and operation of the Transfer of Property Act, 1882, and as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority, and it is expedient to remove such doubts; It is hereby enacted as follows:— ^{IV of 1882.}

(Notes).

I.—“The Crown Grants Act.”

(1) Statement of Objects and Reasons.

For—See Gazette of India, 1895, Pt. V, p. 169.

A

(2) Proceedings in Council.

For—See Gazette of India, Pt. VI, pp. 339 and 355.

B

(3) Scope of title and preamble.

(a) The meaning of the title and preamble, and especially of the preamble of a Code, must be understood to overlie the whole Act, giving colour to, and controlling, its provisions, and supplying *pro tanto* the rule for their interpretation. 2 A. 74 (90).

C

(b) A reference may be made to the preamble and title of an act in construing its words. 9 W.R. 402 (404, 406) (F.B.).

D

(c) The preamble of a statute is a “key to the understanding of it.” 9 C.P. L.R. 65 (67).

E

(4) Preamble how far a guide.

(a) The preamble is undoubtedly a part of the Act, and may be used to explain, but not to control, the enacting part, which often goes beyond the preamble, if words are to be found in the former strong enough for the purpose. *Salkeld v. Johnston*, 1 Hare 196; *Fellows v. Clay*, 5 Q. B. 313, referred to in 2 M.H.C.R. 322; see, also, 11 A. 262 (266).

F

(b) A construction of an Act far beyond its object, as stated at length in the preamble, should not be made, unless distinct words to that effect are used in it. 9 B.H.C.R. 321 (332).

G

(c) But, where the language of the enacting sections of a statute is clear, the terms of a preamble cannot be called in aid to restrict their operation or to cut them down. 11 A. 262 (266).

H

(d) The preamble is no part of an enactment and a mere recital in an Act, either of fact or law, is not conclusive, and the Courts are at liberty to consider the fact or the law to be different from the statement in the recital. 2 B. 19 (38), referring to *Reg. v. Haughton*, 1 El. & Bl.

501.

I

Act XV of 1895 (THE CROWN GRANTS ACT).**1.—“The Crown Grants Act”—(Continued).****(5) Object and scope of the Act.**

“As I have just explained, I have one or two small amendments to make. The first is an addition to the title of the Bill. It was pointed out in one of the papers that whereas the title only referred to the Transfer of Property Act, the substantive provisions of the Bill went further and dealt with Crown grants generally, and got rid of a possible restriction on the part of the common law on the power of the Crown to create new estates. Accordingly I wish to propose to add to the title the words ‘add to remove certain doubts as to the power of the Crown in relation to such grants.’ That will show that the Bill is not confined to the Transfer of Property Act, but relates to all Crown grants, and deals with certain limitations supposed to be imposed otherwise than by that Act. Then, as incidental to that, in the preamble to the Bill it is desirable after ‘1882,’ that the following words be added:—“and as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority. That is merely a similar amendment to carry out the proposed alteration in the title. Then, I thought it better, on consideration, for the purpose of emphasising that this is a general Bill and not merely confined to the Transfer of Property Act, that S. 2 should be altered into Ss. 2 and 3, the sub-section numbers being omitted. By this arrangement what is now sub-section (2) will become S. 3 as a General provision and not limited by reference to the previous sub-section. Then in S. 3, as it will then stand, it has been suggested that the words ‘grant or transfer of land’ in the fourth and fifth lines would look as if a grant was not a transfer, and that a conceivable difficulty might arise in the case of the grant of leases, and therefore I propose to add after the words ‘grant or’ the word ‘other’ to show that every grant or instrument whereby land is conveyed from one person to another is a transfer. Finally, in the fourth line of what will now become S. 3 if these amendments are passed, I have to move that after the word ‘law’ the word ‘statute’ be inserted. One of the Judicial commissioners suggested that the expression ‘enactment of the legislature’ might be considered so as not to apply to English Statutes—such as the Statutes of Uses and Wills which presumably affect all British land in the hands of European British subjects, and that it would be better to insert the word ‘statute,’ which would clearly accord with our established nomenclature, and would leave the expression “an enactment of the legislature” to apply to the Indian Acts, and I propose to insert it accordingly.”

[See the speech of Sir Alexander Miller before the Legislative Council, on 10-10-1895.] J

(6) Crown Grants.

An exemption from the operation of the Transfer of Property Act has been made with retrospective effect by the Crown Grants Act, 1895 (See Act XV of 1895). K

(7) Act XV of 1895, nature of.

The Crown Grants Act is an Act to explain the Transfer of Property Act, 1882, so far as relates to grants from the Crown, and to remove certain doubts as to the powers of the Crown in relation to such grants. L

1.—“The Crown Grants Act”—(Concluded).

(8) Act to be construed strictly.

An act which is arbitrary ought to be construed strictly, and the Courts should not extend its operation further than the language of the Legislature requires. 1 Bom. 523; Sussex Peerage, 11 Cl. & F., 35; 8 Jur. 798.

In the Sussex Peerage, 11 Cl. & F., 35; 8 Jur. 798, *held* “If the words of the Statute are of themselves precise and unambiguous, then, no more can be necessary to expound those words in their natural and ordinary sense. The words themselves do, in such case, best declare the intention of the legislation.” **M**

Title, extent and commencement.	1. (1) This Act may be called the Crown Grants Act, 1895; (2) It extends ¹ to the whole of British India; and (3) It shall come into force at once.
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(Note).

1.—“Extends.”

Act was declared in force.

This—in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898). **N**

2. Nothing in the Transfer of Property Act, 1882, contained shall IV of 1882.

Transfer of Property Act, 1882, not to apply to Crown grants I.	apply or be deemed over to have applied to any grant or other transfer of land or of any interest therein hereto-fere made or hereafter to be made by or on behalf of Her Majesty the Queen Empress, her heirs or successors, or by or on behalf of the Secretary of State for India in Council to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.
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(Notes).

1.—“Transfer of Property Act....Crown Grants.”

(1) Object of this Crown Grants Act—Objection to Sale in execution—not maintainable.

(a) Where a decree was passed for sale of property forming part of property granted by the Crown, and became final, the judgment-debtor cannot object to the sale of such property in execution on the ground that the property was not saleable in view of S. 2 of the Crown Grants Act. 3 A.L.J. 628. **O**

(b) By enacting the Crown Grants Act, the Legislature did not intend that unconditional grants, made by the Crown free from restrictions as to alienations, should not be the subject of sale at the suit of a mortgagee. (*Ibid*). **P**

(c) It is difficult to interpret S. 2 of the Crown Grants Act; but from a perusal of the preamble to the Act it is reasonably clear that the object of the Legislature in passing the Act was to validate any provisions, restrictions, conditions, and limitations over, which might be held to be obnoxious to the restrictions imposed in respect of grants generally by the Transfer of Property Act. 3 A.L.J. 628 (630). **Q**

1.—“*Transfer of Property Act.... Crown Grants*”—(Concluded).

(2) Scope of section—Construction of document—Grant of land by Government.

- S. 2 does not render all the provisions of the Transfer of Property Act inapplicable to lands held under grant from the Crown, but the meaning of the section is that when the Court is called upon to construe an instrument, granting land by the Crown, it shall construe such grant, irrespective of the provisions of the Transfer of Property Act. This is manifest from the concluding words of S. 2. 3 A.L.J. 129 (190)= A.W.N. (1905), 44. R

3. All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor any rule of law, Statute or enactment of the Legislature to the contrary notwithstanding.
- Crown grants to take effect according to their tenor 1.

(Notes).

1.—“*Crown Grants.... tenor.*”

Scope of section.

- (a) S. 3 of the Crown Grant Act, XV of 1895, which made valid “all provisions, restrictions, conditions, and limitations over, contained in any grant or transfer” made by the Government or under their authority, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding” was held by the Judicial Committee to remove the force of an objection that no executive act of the Government could, in or after 1861, have created an estate descendible by any rule of inheritance other than that laid down by law, which in this case was the Hindu Law. 27 A. 634 (653)=8 O.C. 317=2 C.L.J. 194=9 C.W.N. 1009. S
- (b) Act XV of 1895 validates all grants made by the Crown even though their effect may be contrary to the tenor of any rule of Hindu Law. 2 C.L.J. 194=9 C.W.N. 1009=8 O.C. 317=27 A. 634 (653). T

A.—CROWN AND ITS PREROGATIVES.

Crown, whether bound by statute—Rule of Construction.

- (a) The Crown is not bound by a statute unless named in it. *Attorney-General v. Donaldson*, 10 M. & W. 117, cited in 12 M.L.J. 208 (239). U
- (a-1) It is the general principle that the prerogative of the Crown cannot be taken away except by express words. In any case where the prerogative of the Crown has existed, precise words must be shown to take away that prerogative. 12 C.W.N. 1081. Y
- (b) The rule of construction according to which the Crown is not affected by a Statute, unless specially named in it, applies to India. 14 B. 213 [following 1 B. 7 (9); *Ex parte* Postmaster-General; *In re* Bonham, L.R. 10 Ch. D. 595 (601); 7 B. 552 (N)]. W
- (c) It is a universal rule that prerogative and the advantages it affords cannot be taken away except by the consent of the Crown embodied in a Statute. 1 B. 7 (9). X
- (d) This rule of interpretation is well established and applies not only to the Statutes passed by the British, but also to the Acts of the Indian Legislature framed with constant reference to the rules recognized in England. 1 B. 7 (9). Y

1.—“*Crown Grants....tenor*”—(Continued).

A.—CROWN AND ITS PREROGATIVES—(Continued).

- (e) “Adverting to the English maxim of interpretation that the Crown is not bound by a statute unless expressly named, Mr. Sedgwick, an American author, observes: “But in this country generally I should doubt whether this construction could be safely assumed as a general rule. The English precedents are based on the old feudal ideas of royal dignity and prerogative; and where the terms of an Act are sweeping and universal, I see no good reason for excluding the Government, if not specially named, merely because it is Government.” (Construction of Statutory and constitutional laws,” p. 27). 12 M.L.J. 208 (242). Z
- (f) “Mr. Endlich, another American author, says, “The test, therefore, in every case in which the question whether or not Government is included in the language of a statute, has to be met and determined, cannot be a mere general rule either one way or the other, arbitrarily applied, but must be the object of the enactment, the purposes it is to serve, the mischief it is to remedy and the consequences that are to follow—starting with the fair and natural presumption that primarily the Legislature intended to legislate upon the rights and affairs of individuals only.” (*Ibid.*) A
- (g) “Turning now to the policy and course of Indian legislation which, I may say, for upwards of 50 years has been under the direction and control of some of the most eminent English jurists and parliamentary draftsmen—not to say that some of the more important measures were actually drafted and settled by eminent English Judges before being introduced into the Indian Legislative Council—it is noteworthy that as a general rule Government is specially excluded, wherever the legislature considered that certain provisions of an enactment should not bind the Government; and this feature is specially noticeable in measures of taxation, whether imperial, provincial or local and whether such taxes are levied by Government or by ‘Local authorities’ [X of 1897, 3 (28)], who as a rule have to administer their funds subject to the control of Government. I know of only one instance—possibly there may be a few more, though I doubt it—in which the Crown is expressly included, i.e., S. 17 of the Inventions and Designs Act, 1888, which is substantially a reproduction of S. 27 of the English Patents, etc., Act, 1883.” (*Ibid.*) B

(h) INSTANCES IN WHICH GOVERNMENT HAS BEEN SPECIALLY EXEMPTED.

(i) *Indian Contract Act, S. 74.*

The exception provides that when any sum is fixed by way of liquidated damages payable to Government, the whole amount shall be recoverable and not merely reasonable compensation to be fixed by the Court. 12 M.L.J. 208 (243). C

(ii) *Specific Relief Act, Ss. 9, 45, 56 (d).*

Government is excepted from the operation of this section under which a summary suit may be brought by a person dispossessed, without his consent, of immovable property otherwise than in due course of law. S. 45—The Secretary of State for India in Council, the Government of India and the Local Governments are exempted from writs of

1.—“*Crown Grants....tenor*”—(Continued).

A.—CROWN AND ITS PREROGATIVES—(Continued).

Mandamus to be issued by the High Court, S. 56 (d)—excludes the various departments of the Government of India and of the Local Governments from writs of injunction. (*Ibid.*) D

(iii) *Indian Registration Act, S. 90.*

—Exempts from the operation of the Act various documents issued by Government. (*Ibid.*) E

(iv) *Indian Easements Act, S. 2, (a) and (b).*

—Exempts certain prerogatives and customary rights of the Crown from the operation of the Easements Act. (*Ibid.*) F

(v) *The Crown Grants Act (XV of 1895).*

—Exempts Crown grants from the operation of the Transfer of Property Act, both retrospectively and prospectively. (*Ibid.*) G

(vi) *The Civil Procedure Code, 1882.*

Ss. 295 (proviso), 356 (b) and 411—preserve the precedence of Crown-debts 616 (a)—exempts from the operation of the chapter relating to appeals to the Queen in Council, the prerogative rights of Her Majesty to receive and admit appeals. 12 M.L.J. 208 (244). H

(vii) *Indian Companies Act.*

S 212 (proviso), exempts proceedings by Government against Companies in liquidation from being invalidated under the section. (*Ibid.*) I

(viii) *Sea Customs Act.*

S. 20 (proviso), exempts goods belonging to Government from liability to customs duties. There is a corresponding exemption in the Indian Tariff Act. (*Ibid.*) J

(ix) *Indian Stamp Act, 1899.*

S. 3, proviso (1) is as follows :—“That no duty shall be chargeable in respect of any instrument executed by or on behalf of or in respect of the Government, in cases where, but for this exemption, the Government, would be liable to pay the duty chargeable in respect of such instrument.” This is a legislative declaration that, but for this, Government would be liable to pay the stamp duty in cases in which according to the rules laid down in S. 29, the liability will devolve upon Government and not upon the other party to the instrument. Such a declaration is very significant in that neither in S. 29 nor in any other section is Government expressly or by necessary implication included. There is no similar exemption in favour of Government under the Court Fees Act. Government pays court fees like other litigants and, if successful, recovers the same as costs for the adversary and thus it will be seen that Government is really benefitted. There is also another weighty reason against the exemption of Government from paying court-fees, for, the result of such exemption would naturally be to increase the burden of Court-fees upon the rest of the litigants by raising the scale of fees. Under the various Municipalities Acts, Government is specially exempted from payment of certain specified tolls and taxes, but not from others. In the City of Madras Municipality Act (Madras Act I of 1884) itself—S. 154 (a) exempts “gun-carriages, ordnance carts or wagons, cavalry, horses or any vehicle or

1.—“Crown Grants....tenor”—(Continued).

A.—CROWN AND ITS PREROGATIVES—(Continued).

animal belonging to the Government” from payment of taxes on vehicles or animals; S. 164 (a) exempts gun-carriages, ordnance carts or wagons or other such property of Government from liability to registration and payment of fees therefor; S. 174 exempts Government from payment of tolls under S. 170; the provisos to Ss. 332, 335 and 338 exempt places in the occupation or under the control of Government from the operation of those respective sections and the necessity for obtaining licenses on payment of fees. K

(x) *India Act XI of 1881.*

S. 3 provides that, notwithstanding anything contained in any enactment for the time being in force, the Governor-General in Council may by an order in writing prohibit the levy by a Municipal Corporation of any specified tax payable by the Secretary of State for India and S. 5 provides that so long as any order thus made under S. 3 is in force, the Secretary of State shall be liable to pay to the Municipal Corporation in lieu of such tax and such sums as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable. There is no provision in any of the Municipalities Acts, which expressly subjects the Government to any tax or duty payable under the Act. The policy of the Indian Legislature is clearly indicated by the said Act XI of 1881, *vis.*, that Government should be liable to municipal rates and duties unless specially exempted by law; but that when there is no such exemption, the Governor-General should be empowered by law to suspend the ordinary procedure, the levy and collection of a tax or duty payable to a municipal corporation, without depriving the municipality of the probable amount which Government would reasonably have to pay if the duty or tax was paid and collected according to the ordinary procedure. A similar policy underlies the Government Buildings Act IV of 1899 and the Indian Tolls (Army) Act II of 1901. 12 M.L.J. 208 (244). L

(i) In 12 M.L.J. 208 = 25 M. 457, it was *held* that the exemption of Government from Statutory duties and taxes is not really a prerogative of the Crown but depends solely upon the right construction of the Statute. M

(ii) Where the question is whether the Crown is bound by the provisions of Indian Statutes by necessary implication though not expressly named, it is a proper rule of construction to refer to the course of Indian legislation and Acts or Statutes *in pari materia* with the Act of statute in question. [*Colquhoun v. Brooks*, L.R. 12 A.C. p. 493 at p. 511, *F. Bank of England v. Vagliano Bros.* (1891), A.C. 107 at pp. 144—145, *Robinson v. Canadian Pacific Railway* (1892), A.C. 497; L.R. 23 I.A. 18 at p. 26, *D.*] 12 M.L.J. 208 = 25 M. 457. N

(iii) According to the uniform course of Indian legislation, statutes imposing duties or taxes bind Government as much as its subjects except in two cases:—(1) when the very nature of the duty or tax is such as to be inapplicable to Government and (2) when the Government is specially exempted. (*Ibid.*) O

1.—“*Crown Grants . . . tenor*”—(Continued).

A.—CROWN AND ITS PREROGATIVES—(Concluded).

- (iv) “It is moreover provided in the Indian Councils Act “that no law or regulation made by the Governor-General in Council (subject to the power of disallowance by the Crown as hereinbefore provided) shall be deemed invalid by reason only that it affects the prerogatives of the Crown.” S. 24, 24 & 25, Vic., c. 67. 12 M.L.J. 208 (212). **P**
- (j) It was then to remove any doubt that may have been entertained as to the applicability of the Act to the Crown, that the Crown Grants Act was passed, but Crown grants are still subject to the equitable rules which in some measure slaken the rigour with which, technically construed, grants from the Crown are usually fettered.
- (k) (i) “If a man under a verbal agreement with a landlord for a certain interest in land or, what amounts to the same thing, under an expectation created and encouraged by the landlord that he shall have a certain interest, takes possession of such land with the consent of the landlord, and upon the faith of such promise or expectation with the knowledge of the landlord and without objection by him, lays out money upon the land, a Court of Equity will compel the landlord to give effect to such promise or expectation. Per *Kingsdown in Ramsden v. Dyson*, (1866) 1 H.L. at p. 170.” 7 Bom. L.R. 27 (37); 26 B. 271. **Q**
- (ii) That the Crown comes within the range of this equity is apparent from *Plimmer v. Mayor of Wellington*, (1884) 9 A.C. 699 and (1901) 28 I.A. 211; 3 Bom. L.R. 505; 28 C. 693 (P.C.); 3 Bom.L.R. 603 (619); 29 B. 590 (607). (*Ibid*). **R**
- (iii) This equity differs essentially from the doctrine embodied in S. 115 of the Indian Evidence Act, 1872, which is not a rule of equity but is a rule of evidence that was formulated and applied in Courts of law; whereas the former takes its origin from the jurisdiction assumed by Courts of Equity to intervene in the case of, or to prevent, fraud. (*Ibid*). **S**
- (l) In England the Crown is not bound by the Statutes of limitation, unless named, but in India a different rule prevails. 9 M. 175; 4 M. 155; 14 Bom. 213; see Art. 149, Limitation Act (Act XV of 1877). **T**
- (m) But even in England the Courts may, independently of the statute, presume a grant from the Crown upon an uninterrupted enjoyment of twenty years, and such a presumption would be made in this country against the Government in the same way as against a private individual. 5 M.H.C.R. 6; 10 C. 214 (219); 1 Bom. 7 (9); 14 Bom. 213; 8 M. 647. **U**

B.—CROWN GRANTS.

Crown Grants—Object of the Act.

- (a) The object of this Act is to provide for the interpretation of contracts of transfer according to their natural tenor. **Y**
- (b) A provision in the instrument restraining alienation by the grantee or his representatives would be valid under section 3 of the Act notwithstanding the provisions of the Transfer of Property Act or any other Act or law. 3 A.L.J. 129. **W**
- (c) It is competent to a decree-holder in execution of his decree upon a mortgage to sell property effected by such grant. *Ibid.*; 3 A.L.J. 628. **X**

1.—“*Crown Grants....tenor*”—(Continued).

B.—CROWN GRANTS—(Concluded).

- (d) In P.J. 1875, 230, the rule of construction adopted by Westropp, C.J., was that “upon a question of the meaning of words, the same rules of common sense and justice must apply, whether the subject-matter of construction be a grant from the Crown or from a subject,” and that “it is always a question of intention to be collected from the language used with reference to the surrounding circumstances.” Fulton, J., followed the same rule in 18 Bom. 675, 3 Bom.L.R. 603 (620). Y
- (e) As held by Sargent, C.J., in 17 Bom. 407, where an agreement is effected by way of proposal and acceptance between Government and a private individual, it “is subject to the ordinary rules applicable to contracts.” 3 Bom.L.R. 603 (619). Z
- (f) The Government has been held to be as much bound by the equitable rules of estoppel as would be any other person. 28 C. 693 (P.C.); 3 Bom. L.R. 603 (619); 29 B. 580 (607); *Plummer v. Mayor, etc. of Wellington*, 9 App. Cas. 699. A

EXAMPLE.

For instance, where it sells a plot of land stipulating that it “will be assessed at the rate of nine pies per square yard per annum,” it could not thereafter raise the assessment on the ground that the enhancement was justified by an Act, the terms of which must have been well known to the purchaser. 3 Bom. L.R. 603 (616). B

N.B.—See, also, Sub division (k) under Crown and its prerogatives, *supra*.

C.—GRANTS BY CROWN AGENTS—LIMITS OF THEIR POWER.

(1) 21 and 22, Vict., C. 106, Ss. 39, 40.

Originally all lands and hereditaments and other real and personal estate of the East India Company, including such as may thereafter be acquired, vested in the Crown, to be applied and disposed of for the purposes of the Government of India and empowered the Secretary of State in Council to sell and dispose of the same as he may think fit, the necessary conveyance and assurance being required to be made by the authority of the Secretary of State in Council under the hands and seals of three members of the Council. C

(2) 22 and 23, Vict. 1, C. 41, S. 1.

This provision which restricted the authority to sell and dispose of all real and personal estate vested for the time being in the Crown, to the Secretary of State in Council alone, was found to be in practice extremely inconvenient, and a statute was accordingly passed which enacted that the Governor-General of India in Council, the Governors in Council of Fort St. George and Bombay respectively, and the Lieutenant-Governor of the United Provinces or any officer for the time being entrusted with the Government, charge or care of any Presidency, Province or District in India, may, subject to such provisions or restrictions as the Secretary of State in Council with the concurrence of a majority of votes at a meeting shall, from time to time, prescribe, sell and dispose of all real and personal estate whatsoever in India for the time being vested in the Crown, within

I.—“*Crown Grants...tenor*”—(Continued).

C.—GRANTS BY CROWN AGENTS—LIMITS OF THEIR POWER—(Continued).

the limits of their respective Governments provinces or districts, and to enter into any contracts whatsoever within the said respective limits for the purpose of the Government of India. D

(3) 22 and 23, Vict., C. 41, S. 2—32 and 33, Vict., C. 29.

(a) The same statute also lays down the form of any contract, deed or other instrument, which they may enter into and the mode of executing the same. 32 and 33, Vict., C. 29, validated the form adopted by the Inam Commissioner of the Madras Presidency.

(b) Disposition in 1865 of Crown lands by the Governor in Council is dependent for its validity on an adherence to the forms prescribed St. 22 & 23, Vic. 41; 7 Bom. L.R. 27. E

(4) Officers empowered to grant—Scope of authority.

(a) Though the Government of India and Local Governments were empowered by 22 and 23, Vict., C. 41, to sell and dispose of all real and personal estate whatsoever in India, for the time being vested in the Crown, yet, it will be noted that the exercise of such power is made subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting, shall from time to time prescribe. 12 M.L.J. 453 (460). F

(b) The provisions or restrictions which may be so prescribed are really in the nature of *statutory bye-laws*, which if infringed by Government of India or any Local Government, will invalidate, as against the Crown, the disposal of such real or personal estate. (*Ibid.*) G

(c) It appears that such provisions or restrictions have been prescribed by the Secretary of State in Council, though authentic copies of the same are not available and they do not seem to have been published in the official gazette nor in the two volumes of ‘Local Rules and Orders.’ (*Ibid.*) H

(d) Such rules should, however, be distinguished from those which are in the nature of instructions issued, by the Government to the various officers concerned, as to the principles which should *guide them* in entertaining or rejecting applications for grant of various descriptions of land and determining to which of several competing applications the grant should be made, if at all, and the procedure to be adopted by them, which do not concern the Civil Courts. 18 M. 434; 12 M. L.J. 453 (462) = 26 M. 268; 29 M. 461. I

(5) Crown Agents—Their limited power.

(i) PUBLIC AND PRIVATE AGENTS—SCOPE OF AUTHORITY.

(a) The various officers duly empowered to dispose of Crown lands are for that purpose *agents* of the Government. But being public agents, the extent to which their acts and declarations bind the Government is limited. 12 M.L.J. 453 = 26 M. 268. J

(b) In respect to the acts and declarations and representations of public agents, it would seem that the same rule does not prevail which ordinarily governs in relation to mere private agents. As to the latter, the principals are in many cases, bound where they have not authorized the declarations and representations to be made. But in case of

1.—“Crown grants....tenor”—(Continued).

C.—GRANTS BY CROWN AGENTS—LIMITS OF THEIR POWER—(Concluded).

public agents, the Government or other public authority is not bound unless it manifestly appears that the agent is acting within the scope of his authority or he is held as having authority to do the act or is employed in his capacity as public agent to make the declaration or representation for the Government. Indeed, this rule seems indispensable in order to guard the public against losses and injuries arising from the fraud or mistake or rashness and indiscretion of their agents.” Story’s Law of Agency, *cited in*—12 M.L.J. 453 (463) = 26 M. 468. 9th Ed., para 307 (a), *cited in*. **K**

- (c) The same view has been laid down by the Privy Council who said : “Again the acts of a Government officer bind the Government only when he is acting in the discharge of a certain duty within the limits of his authority ; if he exceeded that authority, when the Government in fact or in law directly or by implication ratified the excess.” 8 M.L. A. 529 (555) ; 17 W.R. 497 ; 26 Bom. 801 (807) ; 12 M.L.J. 417. **L**

(ii) DARKHAST RULES—GRANT OF LAND BY AUTHORISED REVENUE OFFICIAL.

The Darkhast rules are rules drawn up in the first instance by the Board of Revenue, but sanctioned by Government and promulgated under its authority. When, in accordance with those rules, a grant of land is made by the Revenue Official authorised under them to make the grant, it would be impossible to hold that it is open to Government or to any subordinate acting on its behalf to cancel the grant and refuse to make the land over to the grantee, and when such a revocation of a grant is irregularly order by a Collector in violation of a distinct provision in the rules, the decisions in 4 M.H.C.R. 429; 12 M. 404 are sufficient authority for the proposition that it is open to a Civil Court to give the grantee a decree declaring his right to the land. 12 M.L.J. 453 (470). **M**

D.—CROWN GRANTS—INCIDENTS.

(1) Grant in perpetuity—Fixity of rent in perpetuity.

- (a) A grant in perpetuity is a grant which in itself has no definite legal meaning in this country and must be understood with reference to the meaning attached to it by the terms of the grant or by the surrounding circumstances. 3 Bom.L.R. 910 (915). **N**

- (b) Standing by themselves, the words may mean either that the grant is permanent as regards hereditary descent or that it is permanent both as regards descent and also rent. (*Ibid.*) **O**

- (c) In the case of the former, the grantee is entitled to hold the land permanently by himself, his heirs, assigns so long as he conforms to the conditions, expressly or impliedly annexed to the grant. (*Ibid.*) **P**

- (d) Now, when a person acquires a land from the Crown, he acquires it subject to the paramount right of the Crown to assess it for the purposes of revenue from time to time according to the exigencies of administration, unless by the grant the Crown has exempted the land from the liability. (*Ibid.*) **Q**

1.—“*Crown grants...tenor*”—(Continued).

D.—CROWN GRANTS—INCIDENTS—(Continued).

- (e) If it is not so exempted, the liability remains, but though it continues it is still a grant of the land in perpetuity—*i.e.*, it is an estate of inheritance—because, as long as the grantee and after him his heirs or assigns pay the land revenue demanded from them they cannot be ousted. (*Ibid.*) R

(2) Construction of Government order—Release of Nazul property.

Relinquishment of property by the Government by ordering annulments of the entry in the Nazul Register “as the occupiers appear to have all along exercised proprietary rights without question of their power to do so,” adding “it is now too late to disturb their status” was contended to be a release in favour of the Zamindar, whilst the occupiers relied upon the words quoted in their favour. But it was finally decided that the words implied no intention to benefit one party more than the other, but merely annulled the entry and restored the rights to the *status quo ante*. 24 A. 1 (10) (P.C.). S

(3) Enjoyment by Crown—Right of rival claimants *inter se*.

The enjoyment of property by the Crown and by which rival claimants are prevented from enforcing their claims against one another would not serve to extinguish their rights *inter se*, and limitation against them would only begin from the date of relinquishment of the property by the crown. 24 A. 1 (12) (P.C.). T

(4) Monopoly of right of ferries—Prior to advent of British rule in Bengal—Acquisition—Prescription.

Prior to the advent of the British rule in Bengal persons had acquired monopoly of the right of ferries by prescription, or otherwise than by a grant from the Crown. Such monopolies were recognized by the Mahomedan Emperors. *E. G. Ain Akbari* (Gladwin Part. II, p. 284 ; 18 C. 652 (660)). U

(5) *Ibid.*—Not recognised at time of permanent settlement.

But at the time of the permanent settlement the British Government refused to recognise them or to treat its profits as an asset for the purpose of settlement, and it was held that if the ferry was in continuation of the highway the monopoly, if any, ceased to exist. S.D.A. (1852) 402 ; 18 C. 652 (662). Y

(6) Ferry rights, how acquired—Limitation Act (XV of 1877), Part IV.

Either in the law as it was before the acquisition by the British Government, or in the regulations before or after the year of 1793, there is no indication that any person is entitled to claim a right of ferry, that is to say, to a monopoly by prescription or by any means other than a grant from the Crown. Since then, the only law under which a person can acquire ownership by prescription is that in Part IV, Act XV of 1877 ; but that portion of the law is not applicable to a right to the exclusive monopoly of a ferry, which is, not a right merely to land, or water, or air, nor a right to ask payment for ferrying a traveller across a river, but an additional right, *viz.*, a right to a monopoly, a right to prevent other people from exercising a right, which they would ordinarily possess. So far, therefore, as mere prescription is

I.—“Crown grants....tenor”—(Continued).

D.—CROWN GRANTS—INCIDENTS—(Concluded).

concerned the claim must fail unless it is supported by evidence sufficient to justify a jury in holding that there has been a grant from the Crown. 18 C. 652 ; 4 C. 599. W

(7) Ferry right—Extinction of the right—Limitation—Bengal Reg. XIX of 1816—Limitation Act, XV of 1877, S. 23.

Although a ferry franchise is not necessarily appurtenant to land, yet, looking at the language of Reg. XIX of 1816, it is a matter for consideration whether a ferry franchise, claimed as appurtenant to certain villages is not subject to the 12 years' limitation. But whether this is so or not, the right is not destroyed by mere non-user without waiver. Nor does the running of an opposition ferry extinguish the right. The franchise continues so long as the grant continues, and until the person, who sets up an opposition ferry, can show a crown grant, or give evidence from which a crown grant is presumed, the cause of action remains. In England, the disturbance of a market, and apparently also of a ferry right, is looked upon more or less in the nature of a nuisance. So too, in India, the violation of a ferry right is a continuous wrong falling within S. 23 of Act XV of 1877. 18 C. 652 (664) ; 6 C. 608 ; S.D.A. 1954, 16 W.R. 281, *Diss.*). [*Yard v. Ford*, 2 Swan, 172 ; 6 I.A. 33, R. 7.] X

E.—NATURE OF GRANT DETERMINING FACTOR—FORM—RESUMPTION RE-GRANT.

(1) Crown-grants—Construction s.

(a) If words are employed in a grant which expressly, or by necessary implication indicate that Government intends that, so far as it may have any ownership in the soil that ownership shall pass to the grantee, neither Government nor any person subsequently to the date of the grant deriving under Government can be permitted to say that, the ownership did not pass, unless there are in the grant such detailed provisions as show that such words are limited in their operation. 1 B. 523. See, also, 29 A. 104 (108) ; 11 M.I.A. 295. Y

(b) A sanad by the State purporting to grant a village in inam “including the waters, the trees, the stones and quarries the mines and the hidden treasures but excluding the *Hakdars* and *Inamdars*” Held to be a grant by the State of such proprietary right as it had in the soil of the village to the grantee. (*Ibid.*) Z

(c) It is not open to the grantor to say that such words as the above mean nothing but the land revenue. (*Ibid.*) A

(d) The saving of the rights of the *Hakdars* and *Inamdars* does not prevent the property in the soil, so far as it can be regarded as vested in Government, from passing to the grantee. (*Ibid.*) [6 B.H.C.R. 191 ; 23 W.R. 378. F.] B

(e) A grant which purports to be a grant of the royal share of the revenue given in commutation of a cash payable as a palanquin allowance, must be construed strictly in favour of the Crown and is *prima facie* a grant only of the revenue. 7 Bom. L.R. 497. C

1.—“Crown Grants....tenor”—(Continued).

E.—NATURE OF GRANT DETERMINING FACTOR—FORM—RESUMPTION—RE-GRANT—(Continued).

(2) Sanad—Construction—Inamdars right to cut timber—Prescriptive title.

(a) In construing grants by former governments, the rule of English law as to the construction of grants to a subject by the Crown is the correct rule to be applied by the Courts in India. 6 B.H.C.R. 191. D

(b) Where a sanad contained only the words “the village of Manavali has been conferred on you as *inam*, to be enjoyed by you, your son, and grandson. The Government dues of the village, viz., *Koolbab Koolkanoo* with the house-tax and assessments, present taxes, and future taxes, together with the house tax, but exclusive of *haks* due to *hakdars*, shall continue to be debited from year to year, next succeeding,” it was held that the plaintiff’s sanad did not operate as an alienation of the soil of the villages, or confer on him a proprietary title in it, and therefore gave the plaintiff no right to the timber growing upon the soil. The holder of such a sanad having only a right in the revenues and none in the soil of the village, cannot by thirty years user, become the proprietor of the timber. (*Ibid.*) E

(c) N.B.—Extract from a highly valuable note to a recently published work of much ability—Cases and opinions on constitutional Law, collected by Forseyth (1869) p. (175) on the subject of the construction of grants in England by the Crown to the subjects, may perhaps be usefully inserted here.

(i) “In cases of grants by the Crown, the rule of law has been that they are construed most strongly against the grantees, and that nothing passes by them without clear and determining words. *Stanhope’s case*, Hob, 243, Bro. Abr. Patent, Pl. 62; 6 B.H.C.R. 191 (203). F

(ii) But this must be taken with the qualification that the words are really doubtful and when the interpretation in favour of the Crown might be without violation of the apparent object of the grant. (*Ibid.*) G

(iii) In *Molyn’s case*, 6 Co., 5 it was held that the King’s grant should be taken beneficially for the honour of the King and the relief of the subject; and Sir Edward Coke says there that the ancient sages of the law construed the King’s grant beneficially, so as not to make any strict or literal construction in subversion of such parts; See, also, 2 Inst. 297. (*Ibid.*) H

(iv) As to grants by the Crown *ex certa scientia et mero motu* see a valuable note to *The case of Alton woods*, 1 Co. 43-b in the edition by Thomas and Fraser, Vol. I, p. 110. The rule of strict interpretation is said not to apply to royal grants made upon a valuable consideration; Kent’s Com. ii, 556. (*Ibid.*) I

(v) “At all events, whatever may have been the old rule, one consistent with justice and common sense now prevails, and it has been expressed in a recent case; upon a question of the meaning of words the same rule of common sense and justice must apply, whether the subject matter of construction be a grant from the Crown or from a subject; it is always a question of intention, to be collected from the language used with reference to the surrounding circumstances: Per Sir John Coleridge

1.—“Crown grants....tenor”—(Continued)

B.—NATURE OF GRANT DETERMINING FACTOR—FORM—RESUMPTION—
RE-GRANT—(Continued).

delivering the judgment of the Privy Council (present Lord Kingsdown, Dr. Lushington, Lord Justice Knight Bruce, Sir Edward Ryan and Sir John Coleridge), in the case of *Lord v. Commissioners of Sydeney*, 12 Moore (P.C.) 497. J

- (vi) “All grants from the Crown are matters of public record ‘The king cannot grant or take anything but by matter of record. * * * It hath this sovereign privilege that it is proved by no other but by itself. 3 Inst. 71, Royal franchises never pass by assignment without special words in the crown’s grant (year Book, 30 Edw. I): and it is said that a royal franchise does not pass to the assignee of him to whom it was granted. (*Ibid.*)” K

- (vii) As to the necessity of express words to convey property of the Crown by reason of prerogative, see *Duke of Beaufort v. Mayor of Swansea*, 3 Ex. R. 413, and *Attorney-General v. Persons*, 2 C. and J. 279. (*Ibid.*)

- (viii) In the latter case the Court said: ‘The rules of construction upon grants from the Crown are much more favourable to the grantor than the rules of construction upon grants from the ordinary person. But this does not mean that a forced construction to be put upon the words in favour of the Crown, but only that where there is a doubt they shall be interpreted in its favour contrary to the ordinary rule by which *verba fortius accipiuntur contra proferentem*: a rule, however, which the Court said in *Lindus v. Melrose*, 27 L.J. Ex. 329, ought to be applied only where other rules of construction fail. If the King’s grant can endure to two intents, it shall be taken to the intent that makes most for the King’s benefit; Com. Dig. Grant (G. 12); see *Jewson v. Dyson*, 9 M. and W. 549; *Doed. Devine v. Wilson*, 10 Moore, (P.C.) 502. (*Ibid.*)” L

- (ix) “In the absence of any reservation to the Crown of any right of killing or taking wild cattle on lands granted or demised in a Colony by the Crown, such right is included in the grant or demise: *The Falkland Islands Company v. The Queen*, 2 Moore (P.C.) (N.S.) 266. (*Ibid.*)” M

- (x) “In an opinion given by Sir A. Cockburn, A.G., and Sir R. Bethell, S.G. August 1854, on certain questions relating to the fishery revenues in Newfoundland and including a question as to the extent of a Crown grant, they said:—

“The meaning of the term ‘coast’ in the grant must, as it seems to us, be taken to mean the shore of what may be properly called the sea. Such is the ordinary acceptation of the term and we see nothing to vary its sense in the present instance. We cannot, therefore, go the length of the opinion given by Sir F. Pollock and Sir W. Follett, that the term ‘coast’ will include the shores and bays, inlets and rivers where the tide flows. It may or may not comprehend the shores or bays and inlets, according to circumstances. We think it does not include the shores of rivers. * * * The grant from the crown vested in the owner of the soil, except a particular 500 feet. The sea having swallowed up the latter, there can be, so far as the grant is concerned, no pretence for calling on the owner to make good the loss and there is no prerogative right in the crown to land so circumstanced, (*Ibid.*)”

I.—“Crown grants tenor ”—(Continued).

E.—NATURE OF GRANT DETERMINING FACTOR—FORM—RESUMPTION—RE-GRANT—(Continued).

- (xi) “In *The Lord Advocate v. Hamilton, I Macqueen*, H.L. 55, where the Crown claimed the bed of public navigable river which by an act of Parliament had been vested in trustees, on the ground that by saving clause the rights of the crown had been reserved, Lord Brougham said : “you cannot out of this saving clause construe any right to be given to the Crown. The right which the Crown had independently of it, and previously to it is saved and nothing more. The Crown is not to have its rights lessened or diminished ; but nothing whatever is given to the Crown by the saving clause except the mode of ascertaining its rights by petition to the Court of Session. As generally speaking, you cannot raise out of a proviso or an exception in a statute any affirmative enactment, so you cannot, generally speaking, raise out of a saving clause any affirmative or positive right whatever. (*Ibid.*)”

(3) **Grant of taluk in Oudh—Sanads, successive—Sanad granted in substitution for another—Imposition of rule of inheritance contrary to Hindu Law—Validity—Executive act in times of peace—Effect—Crown Grants Act (XV of 1895), S. 3.**

Before the annexation of Oudh and the proclamation of confiscation, a taluk was held by a person with whom subsequently a summary settlement was made and who in 1859 obtained a sanad purporting in terms to be a grant of the taluk to him and his heirs. No particular line of inheritance was indicated in this sanad. After his death, the person who succeeded him as his heir accepted in 1861, another sanad which imposed a rule of descent different from that laid down by law. 9 C. W.N. 1009.

Held—That it was competent for the latter who became absolutely entitled by inheritance to everything that passed under the earlier grant to surrender it in consideration of a re-grant of the same estate on new terms. 9 C.W.N. 1009 = 27 A. 634 (P.C.) = 15 M.L.J. 352 = 2 C.L.J. 194 = 8 O.C. 317.

Held further—That all doubts regarding the validity of the second grant have been removed by the provisions of S. 3 of the Crown Grants Act. (*Ibid.*)

Quere.—Whether after peace has been established in a newly acquired territory a Government can by an executive act create a line of inheritance different from that laid down by law. 9 C.W.N. 1009 (1010).

(4) **Grant of village by Government—Existing rights of third person not extinguished.**

The grant by Government, whether native or British, of a village, is subject to all existing rights against Government, whether or not the deed of grant contains an exception or reservation of such rights. Government cannot, therefore, by the alienation of its own rights in a village, even where the *sanad* purports to grant the village as a whole, extinguish or affect any substantive right therein appertaining to third persons, or convey to the grantee any larger or better estate or interest than that vested in Government. 4 B. 643.

I.—“Crown grants....tenor”—(Continued).

E.—NATURE OF GRANT DETERMINING FACTOR—FORM—RESUMPTION—RE-GRANT—(Continued).

(4-a) Self-acquisition—Grants by the Sovereign.

Grants by the Sovereign power to a person governed by the Mitakshara are often self-acquisitions, but this would not be the case where the grant is made in return for services which have been rendered at the expense of the joint family. Property acquired by a grant under such circumstances would be family property, over which the grantee would have no power of disposition by Will as against his joint son.
3 I.A. 270, R. 11 C.P.L.R. 133. **U**

(5) Exemption of documents from stamp duty.

Sanads, inam title-deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land are exempted both from stamp duty and registration [S. 3 (1), Stamp Act, 1899; S. 17 (j); 90 (d), Registration Act]; 19 C. 742 (746)]. **Y**

N.B.—So a grant may be made in any way. E.G. see 19 C. 742, *infra*. **W**

(6) Grants by Government exempt from Registration.

A letter from the Agent to the Governor-General to the Nawab of Murshidabad announcing the latter's position and income and informing him that he was to have the state lands and jewels was held to be exempt from registration. 19 C. 742; (9 C. 704). **X**

(7) Grant—Construction—Intention.

“Upon a question of the meaning of words the same rules of common sense and justice must apply, whether the subject matter of construction be a grant from the Crown or from a subject; it is always a question of intention, to be collected from the language used with reference to the surrounding circumstances.” 12 Mad. P.C. 497. **Y**

(8) Grant to be in writing.

But in England, and so it is conceived it would be in India, all grants must be in writing. “The King cannot grant or take anything but by matter of record. It hath this sovereign privilege that it is proved by no other but by itself.” 3 Inst. 71. **Z**

(9) Royal franchise, passing of.

Royal franchises never pass by assignment without special words in the Crown's grant. Year Book, 30 Ed. 1. **A**

(10) Act to be construed strictly.

But an Act which is arbitrary ought to be construed strictly, and the Courts should not extend its operation further than the language of the Legislature requires. 1 Bom. 523; Sussex Peerage, 11 Cl. & F. 35; 8 Jur. 793. **B**

In the Sussex Peerage, 11 Cl. & F., 35; 8 Jur. 793, held “If the words of the Statute are of themselves precise and unambiguous, then no more can be necessary to expound those words in their natural and ordinary sense. The words themselves do, in such case, best declare the intention of the legislation.” **C**

1.—“*Crown grants...tenor*”—(Continued). *

E.—NATURE OF GRANT DETERMINING FACTOR—FORM—RESUMPTION—RE-GRANT—(Continued).

(11) **Saving clause in Act in favour of Crown.**

A saving clause in an Act in favour of the Crown refers to rights of property or rights in the nature of property which belong to the Crown as Crown property. *Corporation of Yarmouth v. Simmons*, 10 Ch. D. 518 (527, 528). D

(12) **Resumption—Re-grant.**

The Government sometimes declares certain Zemindaries to be impartible, succession to which is also sometimes made subject to the approval of a special officer. The question whether such an order is legal or illegal must be determined by the nature of the tenure. See 12 M. I.A. 1; 9 M.I.A. 606. E

EXAMPLE.

In the year 1767, F., the then reigning *Rajah* of *Hunsapore* having rebelled against the British Government, was expelled by force of arms, and the *Raj* confiscated by Government, who kept possession of the same for upwards of twenty years, and ultimately, in 1790 granted the *Raj* to C., a younger member of the family of F., on whom, some years afterwards, the Government conferred the title of *Rajah*. Held—that, although the *Zemindary* was to be treated as the self-acquired estate of C., yet that the grant being from the ruling power, in the absence of evidence of the intention of the grantors to the contrary, carried the incidents of the family tenure as a *Raj* as the Government's intention must be taken to have been to restore the estate as it existed before its confiscation, with no charge other than that as affected F. and his descendants, and was not, therefore, the creation of new tenure, but simply a change of tenant, by the exercise of a *vis major*. 12 M.I.A. 1 (34)=9 W.R. 15 P.C. (9 M.I.A. 606, F.; F. 13 M. 406, 29 C. 828, 11 C.W.N. 655; 28 M. 130). F

(13) **Inpartibility of Zemindari shown by evidence—Grant by sanad in 1802 of Zemindari without change of rule of succession by primogeniture—Madras Regulation XXV of 1802.**

The question whether an estate is impartible and descends by the law of primogeniture, or is subject to the ordinary Hindu law of inheritance, must be decided in each case according to the evidence given in it. The result of the evidence in this suit was to show that before, and in the year 1802, the *Zemindar* was in possession of his *zemindari* (*Devarakola*, by right of primogeniture, as an impartible estate and that he was so regarded by the Government.

On the passing of Madras Regulation XXV of 1802, and the issue to him of a *sanad-i-milkiyat-i-istimrari*, in accordance with it, he acquired a permanent property in *zemindari* lands at a fixed assessment, but they remained heritable as before; the estate remained entire; and there was no evidence of any intention on the part of the Government to alter the nature of the tenure. What was said in the judgment in the *Hansapur case* (=12 M.I.A. 1) was applicable here. The estate continued to be impartible, and the rule of succession to it was not altered. It descended by the rule of primogeniture. 13 M. 406 (P.C.)=17 I.A. 134. G

1.—“Crown grants....tenor”—(Continued).

E.—NATURE OF GRANT DETERMINING FACTOR—FORM—RESUMPTION—RE GRANT—(Continued).

(14) **Raj seized by Government—Subsequent re-grant effecting division of the estates—Grant to heir of former holder.**

The East India Company seized an impartible Raj, the holder of which had been driven out of the country for acts of rebellion, and placed it under the management of their officers. Subsequently they effected a division of the Raj estate, reinstating in one portion of it the heir of the former holder, and granting the other portion to members of another branch of the family.

Held, that the reinstatement must under the circumstances be treated as proceeding from the grace and favour of the Government in the exercise of their sovereign authority, and the portion restored became thenceforth the separate self-acquired property of the heir, though with all the incidents of the family tenure of the old estate as an impartible Raj. 29 C. 828. (See 12 M.I.A. 1). H

(15) **Hindu Law—Joint family property—Confiscation—Government grant of part of property to one member of family—Whether estate comprised in grant was joint or separate—Separation of one member—His subsequent claim to share of joint property—Partition.**

Before the annexation of Oudh, certain estates belonged to an undivided Hindu family consisting of three brothers G, U, R, of whom G, the eldest, was the manager. The estates were confiscated, but the Government made G a grant of the estate in suit. G when examined with a view to the preparation of the *khewat* of the estate, stated that he and his two brothers were “joint in equal shares.” The *khewat* which was signed by the three brothers and countersigned by the presiding officer, gave, under the head, “shares of proprietors” and “names of zemindars” the names of the three brothers “all three in equal shares.” G never disputed the right and the title of his brothers to a joint share in the property.

Held that it must be inferred that, under a family arrangement which could not now be questioned, the three brothers became jointly entitled as members of an undivided Hindu family to the estate in suit, although the Government grant was to G alone.

The three brothers continued to live jointly until 1867 when U quarrelled with G, left the family home and brought a suit for partition. R too brought a similar suit claiming one-third of the estate, but he remained with G, and withdrew his claim; G died in 1869; U then made G's widow a defendant, and a decree was made by consent giving U one-third of the estate. R made an arrangement with G's widow who executed a Will in his favour that she was to remain in possession, and that his rights were to be in abeyance during her life. On the death of G's widow in 1896, U claimed one-half or in the alternative, one-fourth share of the two-thirds of the estate that had been in her possession during her life-time.

Held, on the evidence, that U had altogether failed to prove that G died entitled to either two-thirds or one-third of the estate as separate property; and that R remained joint with G till the latter's death,

I.—“Crown grants....tenor”—(Continued).

E.—NATURE OF GRANT DETERMINING FACTOR—FORM—RESUMPTION—RE GRANT—(Continued).

and then became entitled to two-thirds of the estate. 32 A. 415
(P.C.)=14 C.W.N. 985=12 Bom. L.R. 656=8 M.L.J. 193=12
C.L.J. 225. I

(16) Raj—Babuana or maintenance grant to younger members—Confiscation of Raj by Government—Effect on grantees—Restoration of Raj—Effect on rights acquired from Government during confiscation—Conditions of grant—Breach—Forfeiture.

When the question was whether a grant of lands originally made for the maintenance of younger members of the family was resumable for alleged breach of condition of the grant, and it appeared that subsequent to the grant the parent estate was confiscated by Government and Government settled with the grantees the lands held by them;

Held, that this constituted a new settlement and when subsequently Government restored the estate to the grantor's heir, the transaction did not operate to recreate the maintenance grant with the conditions. 11 C.W.N. 655. J

When Government confiscated the estate all rights of the grantor as well as of the persons holding lands in the estate lapsed.

The subsequent restoration of the estate did not destroy rights acquired whilst the estate was under forfeiture (*Ibid.*) See, also, 29 C. 828. K

(17) Parlakimidi, zemindari of—Forfeiture—Re-grant—Nature of tenure—Ownership if passed to zemindar—Adverse possession—Acquiescence under mistake—Estoppel.

Prior to the forfeiture by Government of the Parlakimidi zemindari in 1800, the Maliahs (certain hill tracts to the north of the zemindari) formed part of the zemindari. The inhabitants of these hill tracts, the Savaras, were once a turbulent people and in order to control them and to defend the passes to the plains, the country was divided into Muttahs or forts and each placed under the control of a local chief or Bisoyees. The Bisoyees held the Muttahs on a mere service-tenure paying an annual sum to the zemindar by way of kattubadi or quit-rent—an arrangement, not unlike that which prevails in other hill tracts in India. In 1802, the zemindari of Parlakimidi was re-granted to the zemindar in permanent settlement, but Government advisedly retained possession and control of the “lands held by the Bisoyees.” *Held*—that by this and similar expressions were meant the entire Muttahs which made up the Maliahs and not merely the lands under the direct cultivation of the Bisoyees inasmuch as the benefits enjoyed by them included not only those lands but also fees and other dues received by them from the Savaras throughout the whole of the Muttahs. 28 M. 130 (P.C.)=9 C.W.N. 553=1 C.L.J. 460. L

Held further—That the proprietary right in the Maliahs did not pass to the zemindar when the Maliahs were again placed under the control of the zemindar in 1823 and the Bisoyees required to pay their quit-rent through him, and when again in 1825, in consideration of a grant to the zemindar of certain villages situated outside the Maliahs, the zemindari was charged with the tribute payable by the Bisoyees to Government (*Ibid.*) M

I.—“*Crown grants....tenor*”—(Continued).E.—NATURE OF GRANT DETERMINING FACTOR—FORM—RESUMPTION—
RE GRANT—(Continued).

From 1830 to 1890 the zemindari had been managed by the Court of Wards. During the whole or part of this period the Court of Wards worked the forests of the Maliahs for the benefit of the zamindari in the mistaken belief that it belonged to the zamindari and other Government officials acquiesced therein. The Government officials under the same mistake also encouraged the expenditure of zemindari funds upon the making of the roads in the Maliahs. But on the first occasion that a claim of ownership was distinctly put forward by the zemindar it was repudiated by Government.

Held—That the Courts in India were right in holding that the zemindari had failed to make out a title by adverse possession (*Ibid.*) N

Also—That these facts did not estop the Government from claiming ownership of the Maliahs. (*Ibid.*) O

(18) Grant of zemindari by Government to the heir of last holder—Indents—
Partibility.

A zemindari held on military tenure ceased to be so held long before the permanent settlement in 1802. After the settlement it was sold for the debts of the zemindar and bought by the Government, who subsequently re-granted it to the eldest son of the last zemindar with unstrained powers of alienation according to Hindu Law. From these facts no inference can be drawn that the Government intended to or did burden the zemindari with the incident of impartibility, which is an exception to the ordinary Hindu Law. 11 M. 380. P

(19) Zemindari—Present partibility of a zemindari existing before 1789—Subsequent grants by Government—Absence of intention to grant it as impartible—
Sanad-i-milkiyat-i-istimrari.

Though a zemindari may have been originally held on military tenure, and may have been impartible, yet, the subsequent dealings with the estate, the nature and terms of the grants under which it has been held throughout the present century, the absence of proof of any usage or practice of impartibility in the succession to the estate, contrary to the ordinary Hindu Law of succession, and the character of the estate in that it is in no way distinguishable from an ordinary zemindari subject to the payment of a fixed assessment of revenue, may all lead to the conclusion that the zamindari is now a partible estate in a question of succession.

With respect to the Merangi zamindari, it appeared from the *kabuliyat* or instrument of assent to the *sanad-i-milkiyat-i-istimrari* of 1804, that the latter was in the ordinary term of such grants, and there was no ground for inferring that the Government intended to create an impartible zemindari, or to restore an old one with impartibility attached. In 1835, there was, for a second time, such a dealing with the estate by the Government in granting it again by *sanad*, as showed that there was no intention to the effect above mentioned. The case of the *Hansapur* zamindari (12 M.I.A. 1) situate in Behar, as to which their Lordships in 1867 held that it must be taken to retain its previous old quality of impartibility, after having been granted in 1790, was distinguished. 14 M. 237 (P.C.) = 18 I.A. 45. Q

1.—“*Crown grants....tenor*”—(Concluded).E.—NATURE OF GRANT DETERMINING FACTOR—FORM—RESUMPTION—
RE GRANT—(Concluded).

“In the present instance,” their Lordships said “the grant followed on a purchase of the property by the Government. It was given, on the solicitation of persons who had a claim against the Government, to one who, though no doubt the son of the former zemindar, might have had no such grant, but for the intervention of those persons who were attached to him; and there is nothing in the terms of the grant to support the contention of the appellant. 14 M. 297 (246) (P.C.), affirming 11 M. 380. R

(20) Suit for possession of land—Proof of possession for 20 years by claimant—
Onus on the Crown to prove subsisting title—Adverse possession, proof of—If unnecessary.

In a suit for possession of land, it was held, though the title was originally in the Crown, still, if the possession of the claimants for 20 years is proved, then the burden is on the Crown to prove that it has a subsisting title by showing that the possession of the claimants commenced or became adverse within the period of limitation. It is not necessary for the claimant to prove adverse possession for sixty years. 9 M. 175; 15 M. 315 and 19 M. 165, F.; 7 M.L.T. 128. S

(21) Procedure—Resumption of Crown grants.

In the absence of any procedure prescribed by law for the resumption of Crown grants it is manifestly proper and convenient that a notice should be given, even though it be not strictly necessary. *Thomas v. Sherwood*, 9 P.C. 142 (148). T

THE CROWN GRANTS ACT, 1895.

TABLE OF CASES NOTED IN THIS ACT.

I.L.R. Allahabad Series.			PAGE
2 A 74 (90)	Uda Begum v. Imam-ud-din.	...	1
11 A 262 (266)	Queen-Empress v. Indarjit	...	1
24 A 1 (10, 12) (P C)	Maqbul Husain v. Lalta Prasad	...	12
27 A 684 (653)	Sheo Singh v. Raghubans Kunwar	...	4
28 A 404 (108)	Ganpatrao v. Anand Rao	...	13
32 A 415 (P C)	Kedar Nath v. Ratan Singh	...	20
I.L.R. Bombay Series.			
1 B 7 (9)	Ganpat Putaya v. The Collector of Kanara	...	4, 8
1 B 523	Ravji Narayan Mandlik v. Dadaji Bapuji Desai	...	3, 13, 17
2 B 19 (38)	Baban Mayacha v. Nagu Shrivacha	...	1
4 B 643	Desai Himatsingji Joravarsingji v. Bhavabhai Kaya bhai	...	16
7 B 552 (N)	Venubai v. The Collector of Nasik	...	4
14 B 213	The Secretary of State for India v. Mathura	...	4, 8
17 B 407	Secretary of State for India v. Sheth Jeshingbhai Hathising	...	9
18 B 675	Antaji Keshavtambe, <i>In re</i>	...	9
26 B 271	Secretary of State for India in Council v. Datta- traya Rayaji Pai	...	8
26 B 801 (307)	Secretary of State for India in Council v. Sule- manji Moosaji	...	11
29 B 580 (607)	The Municipal Corporation of Bombay v. Secretary of State for India in Council	...	8, 9
I.L.R. Calcutta Series.			
4 C 599	Luchmesur Singh v. Leelanund Singh	...	13
6 C 608	Parmeshari Proshad Narain Singh v. Mahomed Syud	...	13
9 C 704	Omrao Begum v. The Government of India	...	17
10 C 214 (219)	Arzan v. Rakhal Chunder Roy Chowdhry	...	8
18 C 652 (664)	Nityabari Roy v. Dunne	...	12, 13
19 C 742 (746)	Hassan Ali v. Chutterput Singh Dugarh	...	17
28 C 693 (P C)	Ahmad Yar Khan v. Secretary of State for India in Council	...	8, 9
29 C 828	Ram Nundun Singh v. Janki Koer	...	18, 19, 20
I.L.R. Madras Series.			
4 M 155	Appaya v. The Collector of Vizagapatam	...	8
9 M 175	Secretary of State for India in Council v. Vira Rayan	...	8, 22
11 M 380	Jaganatha v. Ramabhadra	...	21, 22
12 M 404	The Collector of Salem v. Rangappa	...	11

TABLE OF CASES.

I.L.R. Madras Series—(Concluded).			PAGE
13 M 406 (P C)	... Srimantu Raja Yarlagaddu Mallikarjuna v. S. R. Y. Durga	...	18
14 M 237 (246) (P C)	Sri Raja Sathrucharla Jagannadha Razu v. S. R. S. Ramabhadra Razu	...	21, 22
15 M 315	Secretary of State for India v. Bavotti Haji	...	22
18 M 494	Periaroyalu Reddi v. Royalu Reddi	...	10
19 M 165	The Secretary of State for India v. Kota Bapanamma Garu	...	22
25 M 457	Bell v. The Municipal Commissioner for the City of Madras	4, 5, 6, 7, 8, 9	
26 M 268	Secretary of State v. Kasturi Reddi	...	10, 11
28 M 130	Goura Chandra Gajapathi Narayana Deo v. Secretary of State for India in Council	...	18, 20
29 M 461	Muthuveera Vandayan v. Secretary of State for India in Council	...	10
Allahabad Law Journal.			
3 A L J 129	... Dost Mohammad Khan v. The Bank of Upper India		4, 8
3 A L J 628 (630)	... v. The Upper India Bank, Limited	...	3, 8
Bombay High Court Reports.			
6 B H C R 191 (203)	Vaman Janardan Joshi v. The Collector of Thana and The Conservator of Forests	...	13, 14
9 B H C R 321 (322)	W. Nicol & Company v. J. S. Castle	...	1
Bombay Law Reporter.			
3 Bom L R 505	... Ahmed v. Secretary of State	...	
3 Bom L R 603 (619, 620)	... Dadoba Janardan v. The Collector of Bombay	...	8, 9
3 Bom L R 910 (915)	... Vinayak v. The Collector of Bombay	...	11
7 Bom L R 27 (37)..	The Municipal Corporation of Bombay v. Secretary of State for India	...	8, 10
7 Bom L R 497	... Balwant Ramachandra Natu, etc. v. The Secretary of State for India in Council	...	13
12 Bom L R 656 (P C)	... Kedar Nath v. Ratan Singh	...	20
Calcutta Law Journal.			
1 C L J 460	... Goura Chandra Gajapati Narayana Deo v. Secretary of State for India in Council	...	18, 20
2 C L J 194	... Raj Indra Bahadur Sing v. Rani Raghubans Kunwar	...	4, 16
12 C L J 225	... Kedar Nath v. Ratan Singh	...	20
Calcutta Weekly Notes.			
9 C W N 553	... Goura Chandra Gajapati Narayana Deo v. Secretary of State for India in Council	...	18, 20
9 C W N 1009	... Sheo Singh v. Raghubans Kunwar	...	4, 16
11 C W N 655	... Raja Narpat Singh Deo v. Kasiram Singh Deo	...	18, 20
12 C W N 1081	... W. Matu, <i>In the matter of the will of</i>	...	4
14 C W N 985	... Kedar Nath v. Ratan Singh	...	20

TABLE OF CASES.

	Sutherland's Weekly Reporter.	PAGE
9 W R 15 (P C) ...	Bahoo Beer Pertab Sahee v. Maharajah Rajender Pertab Sahee ...	• 18, 19, 21
9 W R 403 (404, 406) (F B) ...	Hurro Chunder Roy Chowdhry v. Shoorodhones Dobia ...	1
16 W R 281 ...	Kishore Lall Roy v. Gokool Monee Chowdhrair ...	13
17 W R 497 ...	Beer Kishore Sahoy v. The Government of Bengal ...	11
23 W R 378 ...	Shahzadee Hazara Begum v. The Collector of Burdwan ...	13
	Madras High Court Reports.	
2 M H C R 322 ...	Chinna Aiyar v. Mahomed Fakr-u-din Saib ...	1
4 M H C R 429 ...	Kullappa Naik v. Ramanuja Chariar ...	11
5 M H C R 6 ...	Ponnusawmi Tevar v. The Collector of Madura ...	8
8 M H C 647 ...	Viresa v. Fattayya ...	8
	Madras Law Journal.	
8 M L J 193	Kedar Nath v. Ratan Singh ...	20
12 M L J 208	Bell v. The Municipal Commissioner for the City of Madras ...	4, 5, 6, 7, 8, 9
12 M L J 417 ...	Sappani Asari v. The Collector of Coimbatore for the Secretary of State for India in Council ...	11
12 M L J 453 (470)	Secretary of State v. Kasturi Reddi ...	10, 11
15 M L J 352 (P C)	Raj Indra Bahadur Singh v. Rani Raghubans Kunwar ...	16
	Madras Law Times.	
7 M L T 128	Rama Rau v. The Secretary of State for India ...	22
	Central Provinces Law Reports.	
2 C P L R 133† ..	Mt. Poona v. Rao Nirpat Singh ...	17
9 C P L R 65 (67)	Rao Bahadur Mukund Balakrishna Buti v. Purnia	1
	Oudh Cases.	
8 O C 317	Sheo Singh v. Raghubans Kunwar ...	4, 16
	Moore's Indian Appeals.	
8 M I A 529 (555)	The Collector of Masulipatam v. Cavalry Venkata Narainapah ...	11
9 M I A 606	Katama Natchiar v. The Rajah of Shivaganga ...	18
11 M I A 295	Ruttonji Edulji Shet v. The Collector of Thana ...	13
12 M I A 1 (34)	Bahoo Beer Pertab Sahee v. Maharajah Rajender Pertab Sahee ...	18, 19, 21
	Law Reports, Indian Appeals.	
3 I A 259 (270)	Har Pershad v. Sheo Dyal ...	17
6 I A 33	Rameshur Pershad Narain Singh v. Koonj Behari Pattak ...	13
• 17 I A 134	Srimantu Raja Yarlagaddu Mallikarjuna v. S. R. Y. Durga ...	18

* This is wrongly printed as 8 M 647.

† This is wrongly printed as 11 C P L R 133.

TABLE OF CASES.

Law Reports, Indian Appeals—(Concluded).			PAGE.
18 I A 45	... Sri Raja Sathrucharlu Jagannadha Razu v. S. R. S. Ramabhadra Razu		21, 22
23 I A 18 (26)	... Norendra Nath Sircar v. Kamalbasini Dasi		7
28 I A 211	... Ahmad Yar Khan v. Secretary of State		8
Miscellaneous.			
1 Co 43-b	... <i>The Case of Alton Woods</i>		14
10 M and W 117	... Attorney-General v. Donaldson		4
2 C and J 279	... ———— v. Persons		15
(1891) A C 107 at pp 144, 145	... Bank of England v. Vagliano Bros		
L R 12 A C p 493 (at p 511)	... Colquhoun v. Brooks		7
10 Ch D 518 (528)...	Corporation of Yarmouth v. Simmons		18
10 Moore (P C) 502	... Devine v. Wilson		15
3 Ex R 413	... Duke of Beaufort v. Mayor of Swansea		15
2 Moore (P C) (N S) 266	... The Falkland Islands Company v. The Queen		15
5 Q B 313	... Fellows v. Clay		1
9 M and W 549	... Jewson v. Dyson		15
27 L J Ex 329	... Lindus v. Melrose		15
12 Mad (P C) 497	Lord v. Commissioners of Sydney		15, 17
1 Macqueen H L 55	... The Lord Advocate v. Hamilton		16
6 Co 5	... Molyne's Case		14
9 App Cas 699	... Plummer v. Mayor, etc., of Wellington		8, 9
L R 10 Ch D 595 (601)	... <i>Ex-parte</i> , Postmaster-General, <i>In re</i> Bonham		
(1866) 1 H L at p 170	... Ramsden v. Dyson		8
1 El and Bl 501	... Reg. v. Haughton		1
(1892) A C 487	... Robinson v. Canadian Pacific Railway		7
1 Hare 196	... Salkeld v. Johnston		1
11 Cl and F 35	... Sussex Peerage		3, 17
8 Jur 793			3, 17
9 P O 142 (148)	... Thomas v. Sherwood		22
2 Swan 172	... Yard v. Ford		13

THE CROWN GRANTS ACT, 1895.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S. in Brevier Roman denotes the section.

A

- Act, Crown Grants*, —Statement of Objects and Reasons, *A*, **1**.
 „ —Proceedings in Council, *B*, **1**.
 „ —Scope of title and preamble, *C—E*, **1**.
 „ Object and scope of this, *J*, **2**.
 Act XV of 1895, nature of, *L*, **2**.
 Crown Grants, to be construed strictly, *M*, **3**, *C*, **17**.
 „ —Title, extent and commencement, *S*, **1**, **3**.
 Object of Crown Grants—Objection to sale in execution—not maintainable,
 • *O—Q*, **3**.
 Crown grants—Object of the, *V—B*, **8**, **9**.
 „ —Saving clause in favour of Crown, *D*, **18**.
Adverse possession, Acquiescence under mistake—Estoppel—Parlakimidi, zemindar of—
 Forfeiture—Re-grant—Nature of tenure—Ownership, if passed to zemindar,
L—O, **20**.
 Proof of—If unnecessary—Suit for possession for 20 years by claimant—*Onus* on
 the Crown to prove subsisting title, *S*, **22**.

B

- Burden of proof*, Suit for possession of land—Proof of possession for 20 years by
 claimant—*Onus* on the Crown to prove subsisting title—Adverse possession,
 proof of—If unnecessary, *S*, **22**.

C

- Civil Procedure Code*, 1882, *H*, **6**.
Companies Act, *I*, **6**.
 • *Confiscation*, Hindu Law—Joint Family Property—Government grant of part of pro-
 perty to one member of family—Whether estate comprised in grant was joint
 or separate—Separation of one member—His subsequent claim to share of
 joint property—Partition, *I*, **19**, **20**.
Construction, of document—Grant of land by Government—Scope of section, *R*, **4**.
 Rule of—Crown, whether bound by statute, *U—B*, **4**, **5**.
 Sanaid—Inamdars' right to cut timber—Prescriptive title, *D—O*, **14**, **15**, **16**.
Contract Act, *S*, **74**, *C*, **5**.
Crown, whether bound by statute—Rule of, *U—B*, **4**, **5**.
 • Saving clause in Act in favour of, *D*, **18**.
Crown Agents, Grants by—Limits of their power, **9—11**.
 Officers empowered to grant—Scope of authority, *F—1*, **10**.
 Their limited power, *J—K*, **10**, **11**.

Crown Grants, Exemption, K, 2.

Act, Nature of, *L, 2.*

Transfer of Property Act, 1882, not to apply to, *S, 2, 3, 4.*

to take effect according to their tenor, *S, 3, 4—22.*

Object of the, Act, *V—B, 8, 9.*

Incidents, *11—13.*

Grant in perpetuity—Fixity of rent in perpetuity, *N—R, 11, 12.*

Construction of Government Order—Release of Nazul property, *S, 12.*

Enjoyment by Crown—Right of rival claimants *inter se, T, 12.*

Monopoly of right of ferries—Prior to advent of British rule in Bengal—Acquisition—Prescription, *U, 12.*

Not recognised at time of permanent settlement, *V, 12.*

Ferry rights how acquired—Limitation Act XV of 1877, Part IV, *W, 12, 13.*
Construction, *Y—C, 13.*

Act—Grant of taluk in Oudh—Sanads, successive—Sanad granted in substitution for another—Imposition of rule of inheritance contrary to Hindu Law—Validity—Executive act in times of peace—Effect, *P—S, 16.*

Resumption of—Procedure, *T, 22.*

E

Easements Act, S. 2 (a) and (b), F, 6.

Estoppel, Parlakimidi, zemindari of—Forfeiture—Re-grant of tenure—Ownership, if passed to zemindar—Adverse possession—Acquiescence under mistake, *L—O, 20.*

F

Ferries, Monopoly of right of—Prior to advent of British rule in Bengal—Acquisition—Prescription, *U, 12.*

Ferry rights, how acquired—Limitation Act (XV of 1877) Part IV, *W, 12, 13.*

Extinction of the right—Limitation—Bengal Reg. XIX of 1816—Limitation Act, XV of 1877, *S. 23, X, 13.*

G

Government, Grant of land by—Construction of document, *R, 4.*

Instances in which, has been specially exempted, *5—8.*

Indian Contract Act, *S. 74, F—C, 5.*

Specific Relief Act, *Ss. 9, 45, 56 (d), D, 5, 6.*

Indian Registration Act, *S. 90, E, 6.*

Indian Easements Act, *S. 2 (a) and (b), F, 6.*

The Civil Procedure Code, 1882, *H, 6.*

Indian Companies Act, *I, 6.*

Sea Customs Act, *J, 6.*

Indian Stamp Act, 1899, *K, 6, 7.*

Indian Act XI of 1881, *S. 3, L—U, 7, 8.*

Grant of village by,—Existing rights of third person not extinguished, *T, 16.*

Raj seized by—Subsequent re-grant effecting division of the estate—Grant to heir of former holder, *H, 19.*

Grant to the heir of last holder—Incidents—Partibility, *P, 21.*

Grant, of land by Government—Construction of document, *R, 4.*

by Crown Agents—Limits of their power, *9.*

Officers empowered to—Scope of authority, *H—I, 10.*

of Land by authorised Revenue Official—Dakhart rules, *M, 11*

Grant—(Concluded).

- of taluk in Oudh—Sanadas, successive—Sanad granted in substitution for another
- Imposition of rule of inheritance contrary to Hindu Law—Validity—Executive act in times of peace—Effect—Crown Grants Act (XV of 1895) S. 3, *P*—*S*, 16.
- of village by Government—Existing rights of third person not extinguished, *T*, 16.
- Self-acquisition— by the Sovereign, *U*, 17.
- by Government exempt from Registration, *X*, 17.
- Construction—Intention, *Y*, 17.
- to be in writing, *Z*, 17.
- by sanad in 1802 of zemindari without change of rules of succession by primogeniture—Madras Regulation XXV of 1802—Impartiality of zemindari show by evidence, *G*, 18.
- Government, of part of property to one member of family—Whether estate comprised in grant was joint or separate—Separation of one member—His subsequent claim to share of joint property—Partition—Hindu Law—Joint family property—Confiscation, *I*, 19, 20.
- Babuana or maintenance, to younger members—Confiscation of Raj by Government—Effect on grantees—Restoration of Raj—Effect on rights acquired from Government during confiscation—Conditions of grant—Breach—Forfeiture, *J*, *K*, 20.
- of zemindari by Government to the heir of last holder—Incidents—Partibility, *P*, 21.

H

Hindu Law, Joint family property—Confiscation—Government grant of part of property to one member of family—Whether estate comprised in grant was joint or separate—Separation of one member—His subsequent claim to share of joint property—Partition, *I*, 19, 20.

Indig Act, XI of 1881, S. 3, *L*—*U*, 7, 8.

L

Limitation, Bengal Reg. XIX of 1816—Limitation Act. XV of 1877, S. 23—Ferry right—Extinction of the right, *X*, 13.

Limitation Act (XV of 1877), Part IV—Ferry rights, how acquired, *W*, 12, 13.

S. 23—Ferry right—Extinction of the right—Limitation—Bengal Reg. XIX of 1816, *X*, 13.

M

Monopoly, of right of ferries—Prior to advent of British rule in Bengal—Acquisition—Prescription, *U*, 12.

P

Parlakimidi, Zemindar of, Forfeiture—Re-grant—Nature of tenure—Ownership if passed to zemindar—Adverse possession—Acquiescence under mistake—Estoppel, *L*—*O*, 20, 21.

Possession, Suit for, of land—Proof of, for 20 years by claimant—*Onus* on the Crown to prove subsisting title—Adverse possession, proof of—If unnecessary, *S*, 22.

Preamble, Scope of title and, *C*—*E*, 1.
how far a guide, *F*—*I*, 1.

Procedure, Resumption of Crown grants, *T*, 22.

R

Registration Act, S. 90, *E*, 6.

Re-grant, Resumption, *E*, *F*, 18.

Subsequent, affecting division of the estates—Grant to her of former holder, *H*, 19.

Raj—Babuana or maintenance grant to younger members—Confiscation of Raj by Government—Effect on grantees—Restoration of Raj—Effect on rights acquired from Government during confiscation—Conditions of grant—Breach—Forfeiture, *J*, *K*, 20.

Parlakimidi, zemindari of—Forfeiture—Nature of tenure—Ownership if passed to zemindari—Adverse possession—Acquiescence under mistake—Estoppel, *L*—*O*, 20, 21.

Zemindari—Present partibility of a zemindari existing before 1759—Subsequent grants by Government—Absence of intention to grant it as impartible—Sanad-i-milkiyat-istimarai, *Q*, *R*, 21, 22.

Reg. XIX of 1816, (*Bengal*), Limitation Act, XV of 1877, S. 23—Ferry right Extinction of the right—Limitation, *X*, 13.

Reg. XXV of 1802 (*Madras*), Impartibility of zemindari shown by evidence—Grant by sanad in 1802 of zemindari without change of rule of succession by primogeniture *G*, 18.

Resumption, *Re-grant*, *E*, *F*, 18.

of Crown grants—Procedure, *T*, 22.

Royal franchise, passing of, *A*, 17.

S

Sanad, Construction—Inamdar's right to cut timber—Prescriptive title, *D*—*O*, 14, 15, 16.

granted in substitution for another—Imposition of rule of inheritance contrary to Hindu Law—Validity—Executive act in time of peace—Effect—Grant of taluk in Oudh—Successive, *P*—*S*, 16.

Sea Customs Act, *J*, 6.

Specific Relief Act, Ss. 9, 45, 56 (*d*), *D*, 5, 6.

Stamp Act, 1899, *K*, 6, 7.

Stamp duty, Exemption of documents from, *V*, *W*, 17.

Statute 21 and 22 Vic. C. 106, Ss. 39, 40—Scope, *C*, 9.

22 and 23 Vict. C. 41, S. 1—Scope, *D*, 9.

S. 2—32 and 33 *Vict. C.* 29, *E*, 10.

T

Title, Scope of, and preamble, *C*—*E*, 1.

extent and commencement, S. 1, 3.

Transfer of Property Act, 1882, Crown Grants—Exemption, *K*, 2.

not to apply to Crown Grants, S. 2, 3, 4.

THE POWERS OF ATTORNEY ACT, 1882

(ACT VII OF 1882.)

(WITH THE CASE-LAW THEREON)

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THE POWERS-OF-ATTORNEY ACT, 1882.

(ACT VII OF 1882.)

STATEMENT OF OBJECTS AND REASONS. •

As the law stands, the donee of a power-of-attorney, when executing an instrument pursuant to the power, must sign, and where sealing is required must seal, in his principal's name. The first object of this Bill is to render it legal for such donees to execute in and with their own names and seals. The law respecting the execution of instruments under powers-of-attorney will thus be made accordant with what will be the rule in England from and after the 31st December, 1881, and with what is believed to be the practice in the North Western Provinces, British Burma and, probably, elsewhere in India. The section effecting this is copied from S. 46 of the recent Statute 44 & 45, Vic., C. 41, which takes effect from the close of the present year (1881).

The second object of the Bill is to preclude doubts as to the liability of a donee of a power-of-attorney who makes payment in good faith after the donor of the power has died or become lunatic or bankrupt or insolvent or has revoked the power, when the fact of death, lunacy, bankruptcy, insolvency or revocation was not known to the donee at the time of making the payment. The section effecting this is copied from S. 47 of the Statute above-mentioned, and merely extends to all attorneys the rule as to trustees, executors and administrators making payments under powers, which has been in force in British India for the last fifteen years—See Act XXVIII of 1866, S. 39.

The third and last object of the Bill is to provide for the deposit of instruments creating powers of attorney, and for the evidence of the contents of such instruments. The section effecting this is copied (with the modification necessary to adopt it to India) from 44 & 45, Vic., C. 41, S. 48.

S.M.I.L.A. ;

The 16th October, 1881. }

Whitley Stokes.

E. J. CROSTHWAITE,

Offg. Secy. to the Govt. of India.

PROCEEDINGS OF THE COUNCIL, DATED

7th December, 1881.

POWERS-OF-ATTORNEY BILL.

The Hon'ble Mr. Stokes introduced the Bill to amend the law relating to Powers-of-Attorney, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs, Reynolds and Evans and the Mover. He said that, as the law stood, the donee of a power-of-attorney, when executing an instrument pursuant to the power, must sign, and, where sealing was required, must seal, in his principal's name.

The first object of this Bill was to render it legal for such donees to execute in and with their names and seals. The law respecting the execution of instruments under Powers-of-Attorney would thus be made accordant with what would be the rule in England from and after the 31st December, 1881, and with what was believed to be the practice of the natives in the North Western Provinces, the Punjab, British Burma and probably, elsewhere in India.

The section effecting this was copied from S. 46 of the recent Statute 44 and 45, Vic. C. 41, which took effect from the close of the present year.

The second object of the Bill was to preclude doubts as to the liability of a donee of a power-of-attorney who made payments in good faith after the donor of the power had died or become lunatic or bankrupt or insolvent, or had revoked the power, when the fact of death, lunacy or bankruptcy, insolvency or revocation was not known to the donee at the time of making the payment.

The section effecting this was copied from S. 47 of the Statute above-mentioned, and merely extended to all attorneys the rule as to trustees, executors and administrators making payments under powers, which had been in force in British India for the last fifteen years—*See Act XXVIII of 1866, S. 39.*

The third and last object of the Bill was to provide for the deposit of instruments creating powers-of-attorney, and for the evidence of the contents of such instruments.

The section effecting this was copied (with modifications necessary to adapt it to India) from 44 & 45, Vic. C. 41, S. 48.

It might also be worth while to declare (in accordance with S. 40 of that Statute) that married women, whether minors or not, should have power to appoint attorneys on their behalf for the purpose of executing a deed or doing any other act which they might themselves execute or do.

The matter would be considered by the Select Committee to which he hoped the Bill would be referred.

The Motion was put and agreed to.

PROCEEDINGS OF THE COUNCIL, DATED THE

23rd February, 1882.

POWERS-OF-ATTORNEY BILL.

The Hon'ble Mr. Stokes also moved that the Report of the Select Committee on the Bill to amend the law relating to Powers-of-Attorney be taken into consideration. He said that in this little Bill the Select Committee had only made one or two unimportant changes. They had added a section equivalent to 44 & 45, Vic. C. 40, declaring that married women, whether minors or not, should have power to appoint attorneys on their behalf, for the purpose of executing a deed or doing any other act which they might themselves execute or do. They had repealed Act XXVIII of 1866, section 39, which would be rendered useless by the enactment of S. 3 of the Bill. And they had postponed the commencement of the Act to the 1st May, 1882.

The Motion was put and agreed to.

The Hon'ble Mr. Stokes then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

THE POWERS-OF-ATTORNEY ACT, 1882 ¹.

ACT VII OF 1882.

[*Passed on the 24th February, 1882.*]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1882	VII	The Power of Attorney Act.	Rep. in part, Act XII of 1891 ; Act VI of 1900.

An Act to amend the law relating to Powers-of-Attorney ².

For the purpose of amending the law relating to Powers-of-Attorney ;
It is hereby enacted as follows :—

Short title.	1. This Act may be called the Powers-of-Attorney Act, 1882 :
Local extent.	It applies to the whole of British India ³
Commencement.	and it shall come into force on the first day of May, 1882.

(Notes).

1.—“ *The Powers-of-Attorney Act, 1882.* ”

(1) Statement of objects and reasons.

For —, see Gazette of India, 1881, pt. V, p. 1473. See *supra*. A

(2) Proceedings in Council.

For —, see Gazette of India 1881, Supplement, p. 1409, *Ibid.* 1882, Supplement, p. 204 ; see *supra*. B

(3) Object of the Powers-of-Attorney Bill.

(a) The first object of this Bill is to render it legal for the donees of powers-of-attorney to execute in and with their own names and seals. [*See Statement of Objects and Reasons, supra.*] C

(b) The second object of the Bill was to preclude doubts as to the liability of a donee of a power-of-attorney who made payments in good faith after the donor of the power had died or become lunatic or bankrupt or insolvent, or had revoked the power, when the fact of death, lunacy or bankruptcy, insolvency or revocation was not known to the donee at the time of making the payment. [*See Proceedings of Council, supra.*] D

1.—“*The Powers-of-Attorney Act, 1882*”—(Concluded).

- (c) The third and last object of the Bill was to provide for the deposit of instruments creating powers-of-attorney, and for the evidence of the contents of such instruments. (*Ibid.*) E
- (d) It might also be worth while to declare (in accordance with Ss. 40, 44 and 45, Vic., C. 41 that married women, whether minors or not, should have power to appoint attorneys on their behalf for the purpose of executing a deed or doing any other act which they might themselves execute or do. (*Ibid.*) F

2.—“*The law relating to Powers-of-attorney.*”(1) **Power—Power-of-attorney.**

- (a) Power is an authority which one man gives another to act for him or to do certain acts. An authority enabling one person to, dispose of an interest which is vested in another. Mozley and Whitley's Concise Law Dictionary.
- (b) A power of attorney is a “delegation of authority in writing, by which one person is empowered to do an act in the name of another and that is an appointment of an attorney. Then it is said in Com. Dig. Tit. ‘Attorney’ an attorney is he who is appointed to do anything in the place of another, and he has general authority, or a special one for some particular purpose.” *Per* Final, C.J., “It is not necessary in order to make a man an attorney that he should have a discretion; it is enough if he is authorised to do an act in the name of another.” *Per* Cresswell, J., *Walker v. Remmicks*, 15 L.J.C.P. 174; and see *Queen v. Keik*, 12 A.D. and E. 559. G
- (c) Power or letter of attorney is a writing authorising another person who in such case is called the *attorney* of the party appointing him to do any lawful act in the stead of another; so as to receive debts or dividends; sue a third person; transfer stock or give possession upon a deed of feoffment. *Tomlins' Law Dictionary*. ”
- (d) Power is an authority to dispose of any real or personal property independently of any estate or interest therein. This may be either because the person entitled to exercise the power (who is called the donee of the power) has no interest whatever in the premises, or because it is desired to enable him to dispose of the same further or otherwise than his own interest would warrant; as in the common case of a parent having a life interest in a fund, with power to appoint the shares to his children after his death. If the donee of the power be one who has no interest in the property in question, the power is called a power *collateral* or *in gross*, or *naked*, or a power not coupled with an interest, or a power *appendant* or *appurtenant*.—Mozley and Whitley's Concise Law Dictionary.
- (e) A power, then, is a method of constituting any given person the owner of property otherwise than by the ordinary methods of grant, conveyance and testamentary disposition. The exercise of the power is called an *appointment*; and the persons taking the property under such an appointment are called *appointees*, and not grantees or assignees. Properly speaking, therefore, every power as above defined, is a power of appointment. A power of sale is a power of appointing a purchaser; a power of leasing is a power of appointing a person as lessee, &c. (*Ibid.*) H

2.—“*The law relating to Powers-of-attorney*”—(Continued).

(2) Powers—Different kinds.

(a) Powers are either *general* or *special* (or particular); the former enabling the donee of the power to appoint to any one he pleases and even to himself; the latter enabling him to appoint among particular individuals only, or not at all. There is also the following distinction between these two kinds of powers, *vis.*, that the general power, when exercised, dates from the exercise thereof, and not earlier, while the special power, when exercised, dates from the creation thereof, which is necessarily an earlier period than that of the exercise.—Brown's New Law Dictionary.

(b) Powers are either *general* or *special*, *i.e.*, *general* in respect of the conduction of all of a person's affairs, as where he leaves the country; *special* in respect of any one or more named matters, as to receive money. This instrument gives the attorney authority to act in his name exactly as the party giving it would himself do, until revocation.—Tomlins' Law Dictionary.

(c) A *mixed* power is one which is neither *exclusive* or *distributive*, but enables the donee either to give the whole to one member of a class, or to apportion it amongst such members as he may select.—Rawson's and Remnant's Pocket Law Lexicon. I

(3) Certain expressions explained with respect to “powers.”

(a) DONEE.

The person to whom the power is given is called the “donee” of the power. Goodeve, p. 298. J

(b) APPOINTOR.

The ‘donor’ of the ‘power’ when he exercises it is called the ‘appointor.’ (Ibid.) K

(c) APPOINTEE.

The person in whose favour the power is exercised is called the ‘appointee.’ (Ibid.) L

(4) Power-of-attorney—Letter of attorney—Procurator.

(a) This is an instrument by which one person empowers another to act in his stead. The donor of the power is called the attorney, or (when appointed by a Corporation aggregate to receive administration), the syndicate. A power-of-attorney which simply authorises the attorney to appear in an action and confess the action or suffer judgment to go by default is called a *warrant of attorney*. All other authorities are called simply *powers-of-attorney*, the power being *special* if it is to do one particular act, and *general*, if to do generally all matters connected with a particular employment. Again a *general power-of-attorney* may be either *limited*, as when it leaves nothing to the discretion of the attorney; or *unlimited* (or *absolute*), as when it leaves everything to his discretion.—Brown's Law Dictionary.

(b) Where an attorney sues on behalf of his principal the suit should be brought in the name of the person for whom he professes to appear, not in his own.—(1 N.W.P. 277); 2 N.W.P. 415; 2 N.W.P. 60. M

2.—“*The law relating to Powers-of-attorney*”—(Continued).

(5) Power of appointment.

Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.—Act X of 1865 (Succession), S. 56. M-1

N.B.—For cases—See *Appendix*.

(6) Power—Delegation.

The power cannot be delegated. See Goodeve's Real Property, 5th Ed., pp. 279 & 290. N

Nor can a deputy be appointed by the attorney, unless the deed conferring the power expressly authorizes such delegation or appointment. See 1 Dav. Prec. 476, note. See Goodeve's Law of Real Property, p. 290. O

(7) Power of attorney—Execution—Evidence to show that principal is alive—Consideration.

(a) A power-of-attorney is an authority from one person to do an act in the turn, stead, or place of another: as, in the case of a feoffment, a letter of attorney to deliver seisin to the feoffee, which must be by deed, and must be executed in the life-time of the donor. Co. Litt 51 (b) 52 (b), cited in Goodeve's Real Property, 5th Ed., p. 289. P

(b) Hence it came to be necessary in making out title to property that, where any deed had been executed by attorney, the power should be produced and evidence given of the principal having been alive at the time of its being acted upon. [Note to *Smart v. Sanders*, 5 C.B. 917; and *Dart V & P. 347.*] See Goodeve's Real Property, 5th Ed., 289. Q

(c) Where it had not been given for valuable consideration, it was also revocable at any time by the donor, and was liable to be suspended by his mental incapacity; therefore, in every such case, it was further necessary that inquiry should be made whether the power had been revoked prior to its apparent or proposed exercise. *Ib.*, and 592. (*Ibid*). R

(d) Where the conveyance, on sale or mortgage, was executed by attorney, the practice was to retain, or deposit in the names of trustees at the risk of the vendor or mortgagor, the purchase or mortgage-money, until satisfactory evidence had been adduced of the validity of the power at the date of the execution of the conveyance. *Dart, V & P. 347. (Ibid)*. S

(e) Now in cases falling within the Conveyancing Act, 1882, 45 & 46 Vict., C. 39, Ss. 8, 9, it is necessary for a purchaser to ascertain the facts of the principal being alive and the power being in force at the time of the conveyance being executed. Goodeve's Real Property, 5th Ed., p. 289. T

(f) (i) These cases are where the power of attorney has been created by an instrument executed after 1882, and either is given for a valuable consideration, and in the instrument creating it is expressed to be irrevocable. 45 & 46, Vict., C. 39, S. 8. (*Ibid*). U

(ii) Or, whether given for a valuable consideration or not is in the instrument creating it expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument. *Ib.*, S. 9. (*Ibid*). U-1

8) Construction of power-of-attorney.

(a) A power-of-attorney should be construed strictly—Story on Agency, S. 68; 14 B. 590 (593); U.B.R. (1902), 3rd Qr., Power of Attorney, 5 (7); 5 M.I.A. 27; 8 C. 934; 10 C. 901. Y

2.—“The law relating to Powers-of-attorney” —(Continued).

- (b) Powers-of-attorney are to be construed strictly, that is to say, that where an act purporting to be done under a power-of-attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument, the authority in question, is to be found within the four corners of the instrument, either in express terms or by necessary implication. *Bryant v. La Banque Du Peuple*, (1898) A.C. 170; cited in 6 C.L.J. 491 (500); U.B.R. (1902), 3rd Quarter, Power-of-Attorney, 5 (7); 8 C. 934; 10 C. 901; 14 B. 590. W & X
- (c) A general power-of-attorney does not necessarily imply an unlimited authority to borrow, and the general words in a power-of-attorney confer upon the agent only, such general powers as are necessary to carry out the special powers. 3 Ind. Cas. 330 [6 C.L.J. 639, R.]. Y
- (d) When a person holds a general power of attorney for another, he is at liberty to refuse to accept service of summons and appear in a suit brought against the principal; in other words, he may act upon the power or not, as he may think proper. 8 C. 917. Z

(9) Power-of-attorney—Construct—Power to dispose of property.

- (a) “A power to dispose” would include any disposition by way of sale, mortgage, charge, exchange or lease. It might also include a power of gift, but this power would be dependent upon the consent of the beneficiaries. Ph. & Trev. 405; but see *infra*. A
- (b) A power-of-attorney authorized the holder “to dispose” of certain property in any way he thought fit.

Held, that the word “dispose” was not used in any technical sense, and that the holder of such power had no authority to mortgage the property. 14 B. 590 (5 M.I.A. 27, F.). B

(10) Power to prosecute and defend suits.

- (a) The nature and limit of the powers given by a power-of-attorney depend on the terms of the power-of-attorney. A power-of-attorney given to an agent to prosecute and defend suits, was held, on a perusal of the terms, not to authorise the power holder to refer questions to arbitration. 6 N.W.P. 210. C
- (b) T, having frequent occasion to prosecute and defend suits in different Courts, and being unable to give his personal attention to them, executed a power-of-attorney in S's favour, whereby he authorised S to watch the cases on his behalf, to appoint any pleader or mookhtar; to receive, after giving a receipt for the same, any money deposited for, and due to him from the Courts; to act on his behalf in cases of *Dakhil-Kharij*, and obtain the entry of his name after getting the names of other persons expunged; to purchase villages with the money due under decrees; to file on his behalf receipts, acquittances, *razeenamahs*, and other documents; and to get back deeds and decrees and give receipts and acquittances. *Held*, that the terms of the power-of-attorney did not authorise S, to refer questions to arbitration. 6 N.W.P. 210. D

(11) Power—Principal and agent—Power to sue given to an agent, extent of—Yakil, reasonable remuneration to, under such power.

A mere power to sue does not authorize an agent to do more than employ a yakil on the terms of paying him a reasonable remuneration. 10 B. 18. E

2.—“The law relating to Powers-of-attorney”—(Continued).

(12) Power to carry on business of firm.

Where a power-of-attorney authorises the plaintiff to carry on the business of the firm, the power cannot be stretched to include the winding-up of it altogether, by a dissolution of partnership. The plaintiff has no right to sue for dissolution of partnership. U.B.R. (1892—96), 525. F

(13) Power to sell, etc.

(a) A power “to sell, endorse and assign,” is a power to sell, a power to endorse, and a power to assign, so that these acts may be done apart or together, and the powers are conveyed conjointly and severally. 5 M.I.A. 27. G

(b) The power to sell is only a power to sell in the ordinary course of business, i.e., for a money price. So, where the sale was partly for a money price and partly in consideration of the sale of certain shares at a future day, the transaction is not within the power, 9 C. 1 (9). H

(c) SALE UNDER POWER—DUTY OF PURCHASER.

Where shares in a public company are sold under a power, it is the duty of the purchaser, to see that the price was paid to the owner or his attorney. *Per Wilson, J.*, 9 C. 1. I

(d) A joint and several power authorising the holders “to purchase, sell, endorse, and transfer for the principal and in his name and on his behalf” all his shares in any public company or society, would not justify them to enter into a contract, embodied in bought-and-sold notes, agreeing to sell and to purchase sometime hence at an advanced rate on their account, certain shares, the bought-and-sold notes bearing the same date and being one transaction. *Per Garth, C.J.*

It was held that the above transaction was either an actual loan, or a transaction in the nature of a loan for the purpose of raising money. *Per Garth, C.J.*, 9 C. 1. J

(e) The payee of promissory notes of the East India Company, by a power of attorney, authorised his agents at Calcutta to “sell, endorse and assign” the notes. These notes were transferable by endorsement, payable to bearer. The agents in their character of private bankers, borrowed money of the Bank of Bengal, offering, as security, these promissory notes. The Bank made the advance, and the agents endorsed the notes, such endorsement purporting to be as attorney for their principal, and deposited them with the Bank, by way of collateral security, at the same time authorising the Bank, in default of payment, to sell the notes in reimbursement of the advances. The agents afterwards became insolvent, and default having been made in payment, the Bank sold the notes, and realised the amount of their loan. Held, that the endorsement of the notes by the agents of the payee to the Bank was within the scope of the authority given to them by the power-of-attorney, and that the payee could not recover in detinue against the Bank. 5 M.I.A. 1. K

(14) “Power of sale” includes power to mortgage with right of sale.

(a) Where the executors have a power of sale, they have authority to execute a mortgage with a power of sale in favour of the mortgagee. 1 A. 710 (F.B.). L

8. 1] Act VII of 1882 (THE POWERS-OF-ATTORNEY ACT).

2.—“The law relating to Powers-of-attorney ”—(Continued).

(b) In England, an executor may mortgage with a power of sale property which wholly vests in him. *Russel v. Plaice*, 18 Beav. 21 ; cited in 1 A. 710 (719). **M**

(c) Where a Will gave the executor power to sell the property to pay off debts incurred by the testator, or if the property was a losing concern, the executor was held to have power under S. 90 of the Probate Act, corresponding to S. 260 of the Succession Act, to mortgage the property in case of necessity. 8 C.W.N. 362. **N**

(15) Executor cannot exercise a power of sale by attorney.

Executors cannot exercise a power of sale by attorney. *Combe's case*, 9 Co. 75 (b) ; cited in 1 Will. Exors., 10th Ed., 712. **O**

(16) Power of attorney by executrix—Power by statute—Power by Will—Requisite in India of delegation of agency—Execution of deeds.

A power-of-attorney contained, amongst others, the power to sell and convert into money “ the goods, effects and things belonging to ” the principal; held, that the word “ things ” in the power included mortgages as being things in action, there being nothing in the deed which suggested that the things were to be limited to “ choses-in-possession ” and not to “ choses-in-action ; ” held,—further that the mortgages were capable of being transferred by the attorney (a).

An executrix is not competent to exercise the power of sale given by statute or Will, by an attorney ; there is no distinction between a power given by statute and a power given by a Will.

A power-of-attorney, in so far as it delegates to an attorney power to exercise the discretion vested in an executrix, is void. 13 C.W.N. 1190. **P**

But where the executrix granting the power was actually present when certain deeds or transfer were executed, and her attorney had consulted her in all the dealings and she approved of the same, and thereafter, the attorney executed the documents under her approval, and where the documents executed did not express whether they were executed under a power given in writing or under verbal instructions,

Held, that the case fell within the legal maxim of *ut res majis valeat quam pareat* and that it must be taken that the attorney executed the document under the express verbal authority given to him by the executrix principal. 13 C.W.N. 1190. **Q**

(17) “ Power to mortgage ” does not authorise a sale.

A power to mortgage does not authorise a sale, though it authorises a mortgage with power of sale. *Cook v. Dawson*, 29 Beav. 123 ; *Bridges v. Longman*, 24 Beav. 27 ; *In re Chawner's Will*, 8 Eq. 569 ; cited in Theob., 6th Ed., 435. **R**

(18) Power to sell or mortgage—Execution of simple money-bond.

A power to sell or mortgage property for payment of debts cannot be construed to include a power to give a simple money-bond, an instrument of a totally different nature and one which is not a means of paying debts at all. An instrument of this kind must be construed strictly. 7 C. 253 = 8 C.L.R. 433. **S**

2.—“The law relating to Powers-of-attorney”—(Continued).

- (19) **Power-of-attorney—Constitution of agency by power-of-attorney—Power to borrow money for particular purpose in particular manner—Binding nature of debt contracted in different manner.**

It is an inflexible rule in the construction of powers-of-attorney that the special purpose for which the power-of-attorney was given, is first to be regarded, and the most general words, following the declaration of that special purpose will be construed to be merely all such powers as are needed for its effectuation. The owner of a ship constituted the master thereof as his agent and authorized him by means of a power-of-attorney to raise money on the ship's papers for the repair of the ship. The power further authorised the agent “to do and act in the premises as fully and effectually to all intents and purposes as” the owner might or could do if personally present. *Held* that the master could not raise money by mortgaging the ship. The authority given was not to mortgage the ship, but to pledge the title deeds. 2 M.H.C. 177 (*App.*) 6 C.L.J. 490. T

- (20) **Pledge of Government securities by agent for unauthorised loan—Suit for recovery of securities by principal from transferee—Negotiation.**

Where a person, who was authorised, jointly and severally with another, under a power-of-attorney to “negotiate, make sale, dispose of, assign and transfer” certain Government securities, pledged them for a certain advance for which he gave a pro-note, signing himself as attorney for the owner, *held* that the owner was entitled to recover the securities from the transferee, as the transaction was not authorised by the power. 8 C. 934; *on appeal*, 10 C. 901 (P.C.). U

Even granting the applicability of “negotiation” to Government securities, a power to “negotiate” them would not authorise an agent to do more than put them if necessary, in the name of the owner. *Per White, J.*

A power to negotiate Government securities would authorise their negotiation by way of pledge. *Per Garth, C.J.*, 8 C. 934; *on appeal*, 10 C. 901 (P.C.). Y

Where a power-of-attorney authorised an agent to negotiate, sell, dispose of, assign and transfer certain Government notes deposited with him for safe custody, and to contract for and purchase or accept the transfer of fresh Government notes on the principal's behalf, and for such purposes to sign for the principal in such transactions, *held*, with respect to the general objects of the power, that the agent had no authority to pledge by indorsing one of the notes and borrowing money thereon for himself and in fraud of his principal, and that the lender of the money acquired no title to the note as against the principal.

If a power to endorse had been expressly given, as in 5 M.I.A. 1 and 5 M.I.A. 27, it would perhaps have been in the power of the donee, at his discretion, to indorse the note converting it into one payable to bearer for any purpose. 10 C. 901 (P.C.) = 11 I. A. 94; (*on appeal* from 8 C. 934. W

5 M.I.A. 1 and 5 M.I.A. 27 have not decided that the words in a power-of-attorney are always to be construed disjunctively, though they may be so construed. A rule of construction, intended to aid in arriving at the meaning of the parties, may as well be applied in the construction of the power as in that of any other document. (*Ibid.*) X

2.—“ The law relating to Powers-of-attorney ”—(Continued).

(21) Agent—Power-of-attorney.

The petitioner held a power-of-attorney jointly from five powers which did not authorise him to act generally in any manner in which one or more of these five persons might be severally concerned, nor was it sufficiently stamped to cover five separate powers-of-attorney on behalf of five individuals. *Held*, that under this power-of-attorney the agent could not act in cases in which all the executants of the power-of-attorney were not concerned. 1 O.C. 159. **Y**

(22) Bank—Bank Manager—Private Agent—Bona fides.

A being in uncontrolled management of the National Bank in Calcutta, and purporting to act under a power-of-attorney, intended to be given to him in his private capacity but addressed to him as “Acting Manager of the National Bank” by B as constituent of the National Bank without drawing any cheque on B’s account, and simply by means of transferring in the books of the Bank Rs. 15,000 from B’s deposit account with the Bank to the account of one C, who was indebted to the National bank, purported to make an advance of Rs. 15,000 from B to C; whereas, in fact, the real transaction amounted only to transferring the liability of C to that extent from the Bank to B.

Held that, so far as this transaction was concerned A could not divest himself of his character of Bank Manager and that, acting as the agent for both parties, he acted to the prejudice of B and to the advantage of the Bank, and that there was, in fact, a breach of his duty to B to which the Bank was a party. *Held* also, that A was not able under the power-of-attorney to bind B by consenting to any dealings by the Bank or C with goods in the Bank’s godowns which would prejudice B. W.R. (1873) 68. **Z**

(23) Contract Act (IX of 1872), S. 25—Attorney, power of—Mooktarnama—Bond to secure barred debt whether binding.

A mooktarnama empowering the mooktar to execute bonds in lieu of former debts does not authorise the mookhtar to execute a bond to secure a debt already barred by limitation. 11 C.L.R. 581. **A**

(24) Principal and agent—Mooktarnama—Power of attorney—Authority of agent, limitation of—Gift.

A Mooktarnama merely gave the mooktar power to grant *ticca* and *ijara* leases, and, when advisable, to sell, mortgage, and make gift of the whole or portion of the property of the principal. *Held*, that the mooktar had no power to create a permanent tenure. 13 C.L.R. 247. **B**

(25) Power of attorney to husband—Pardanashin lady.

If a *pardanashin* lady deliberately makes herself jointly and severally liable for a debt incurred by her husband on the strength of a power-of-attorney alleged to be given to him by her, she cannot subsequently be permitted to turn round and question his authority to pledge her credit. 3 Ind. Cas. 390. **C**

2.—“The law relating to Powers-of-attorney” —(Concluded).

(26) Consideration for power-of-attorney.

An instrument executed in favour of a person, authorising him to recover a certain sum from certain others and, out of that sum, to pay himself a debt already due to him, and also the expense incurred in making the recovery is supported by good consideration. 7 B.H.C.R. (A. C.) 10. **D**

(27) Government, suit by—Power of attorney to institute suit not necessary.

In a suit on behalf of the Secretary of State for India in Council no power-of-attorney is required from the Financial Commissioner, Punjab, in favour of the Collector authorising him to institute and conduct the suit. 84 P.L.R. (1905) = 160 P.L.R. 1905. **E**

(28) Summary dismissal of an appeal—Appeal—Special power of attorney—Stamped paper for special power-of-attorney.

A Court is not justified in summarily dismissing an appeal on the ground that the special power-of-attorney referred to in Civil Circular I. I is unstamped. 15 C.P.L.R. 66. **F**

3.—“It applies....British India.”

Places where the Act has been declared in force.

This Act has been declared to be in force in Santhal Parganas by S. 3 of the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899). **G**

2. The donee of a power-of-attorney ¹ may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal ² where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

[44 and 45,
Vic., C. 41,
S. 46.

Execution under
Power-of-attorney.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

(Notes).

General.

(1) Reason for inserting this section.

As the law stands, the donee of a power-of-attorney, when executing an instrument pursuant to the power, must sign, and where sealing is required must seal, in his principal's name. The first object of this Bill is to render it legal for such donees to execute in and with their own names and seals. The law respecting the execution of instruments under powers of attorney will thus be made accordant with what will be the rule in England from and after the 31st December, 1881, and with what is believed to be the practice in the North Western Provinces, British Burma and probably, elsewhere in India. [See Statement of Objects and Reasons.] **H**

General—(Concluded).

“(2) Source of section.

• This section is copied from S. 46 of the recent Statute 44 & 45, Vic., C. 41 which takes effect from the close of the present year. (1881) [*Ibid.*] I

1.—“Donee of a power-of-attorney.”

Donee of a power-of-attorney—Meaning.

The person to whom the power-of-attorney is given is called the donee of the power-of-attorney. See Goodeve's Law of Real Property, p. 298. J

2.—“May....his own seal.”

(1) Mode of execution by attorney.

The donee of a power-of-attorney may, at whatever date the power was created, if he thinks fit, execute any assurance, instrument, or thing in and
• with his own name and signature and seal, by the authority of the donor of the power. See Goodeve's Law of Real Property, p. 290. K

(2) Execution of document by attorney—Power of attorney to several persons—Name of principal signed by one attorney—Document attested by the other attorneys.

A executed a power of attorney by which, for the purpose of paying off certain debts payable by him, he authorised B, C and D “to borrow money to the extent of the amount which is payable by me, to sign for me, to execute a document on my behalf, to hypothecate my property and to get the document registered.” Subsequently a mortgage-bond was executed which was signed by B on behalf of A and attested by C and D amongst others. The bond was executed and registered with the consent of B, C and D.

Held, that it was not necessary that the three agents should have signed the name of A.

• *Held*, further, that, although, when an authority is given to two or more persons jointly, all the agents must concur in the execution of it in order to bind the principal in the absence of a provision that some alone shall form a *quorum*, yet, in the case of an authority given in the terms in which the authority was framed in this case, if all the agents concurred in the execution of it, one of the agents with the consent of the others writing the name of the principal and the others attesting the execution, the requirements of law were satisfied, it being impossible for the co-agents to sign the name of the principal jointly. 6 A.L.J. 462=2 Ind. Cas. 805. L

3. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be

Payment by attorney under power, without notice of death, &c., good ¹.

liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same.

^{44 and 45, Vic., C. 41, S. 47.}

But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

(Notes).

General.

(1) Reason for inserting this section.

The second object of the Bill is to preclude doubts as to the liability of a donee of a power-of-attorney who makes payment in good faith after the donor of the power has died or become lunatic or bankrupt or insolvent or has revoked the power, when the fact of death, lunacy, bankruptcy, insolvency or revocation was not known to the donee at the time of making the payment. See Statement of Objects and Reasons, *supra*.

(2) Source of section.

This section is copied from 44 and 45, Vict., C. 41, S. 47 and merely extends to all attorneys the rule as to trustees, executors and administrators making payments under powers which has been in force in British India for the last fifteen years—See Act XXVIII of 1866, S. 39. See Statement of Objects and Reasons.

1.—“Payment by attorney....good.”

English Trustee Act, 1893—Protection.

In order to protect trustees and personal representatives, making payments or doing acts in pursuance of a power of attorney, it is enacted by the Trustee Act, 1893, as follows:—

“A trustee, acting or paying money in good faith under or in pursuance of any power of attorney, shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act, the person who gave the power of attorney was dead, or had done some act to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying. Provided that nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made, and that the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.” See Goode’s Law of Real Property, p. 290.

Similar protection, as regards payments and acts made and done after 1881, has been given by the Conveyancing and Law of Property Act, 1881, 44 and 45, Vict., C. 41, S. 47, to all persons acting in good faith. See Goode’s Law of Real Property, p. 290.

44 and 45,
Vic., C. 41,
S. 48.

Deposit of original
instruments creat-
ing powers-of-attor-
ney.

4. (a) An instrument creating a power-of-attorney its execution being verified by affidavit, statutory declaration or other sufficient evidence¹, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be.

(b) A separate file of instruments so deposited shall be kept ; and any person may search that file, and inspect every instrument so deposited ; and a certified copy thereof shall be delivered out to him on request.

(c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court.

(e) The High Court may, from time to time, make rules ² for the purposes of this section, and prescribing, with the concurrence of the Local Government, the fees to be taken under clauses (a), (b) and (c).

3³(f) * * * * *

(g) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

(Notes).

General.

(1) Reason for inserting this section.

The third and last object of the Bill is to provide for the deposit of instruments creating powers of attorney, and for the evidence of the contents of such instruments. See Statement of Objects and Reasons. Q

(2) Source of section.

This section is copied (with the modification necessary to adapt it to India) from 44 & 45, Vic., C. 41, S. 48. (*Ibid.*) R

I.—“An instrument....evidence.”

(1) Presumption as to powers-of-attorney.

S. 85 of the Evidence Act provides that the Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before and authenticated by a Notary Public or any Court, or Judge, Magistrate, British Consul or Vice-Consul, or Representative of Her Majesty or of the Government of India, was so executed and authenticated. 16 C. 776 (779). S

(2) Evidence Act, S. 85—Executor *dative qua father*—Power of attorney—Application for letters of administration.

In order to comply with the provisions of S. 85 of the Evidence Act the power-of-attorney must be executed before or be authenticated by one of the persons mentioned in S. 85, Evidence Act. An application for letters of administration made by a person under a power-of-attorney executed in Scotland by a person appointed executor *dative qua father* was refused, as the power was not executed and authenticated as required by S. 85 of the Act. 16 C. 776. (Anonymous Case, Fulton, 72 ; *In the goods of Macgowan*, Morton, 370, R.). T

In 16 C. 776 the learned Judge seems to have assumed that the provision contained in S. 85 is of an exhaustive character and that no other mode of proving the execution of power of attorney is admissible.

1.—“An instrument....evidence”—(Continued).

That assumption, however, is not warranted by the language of the section, nor can it have been intended to exclude other legal modes of proving the fact in question, *viz.*, the execution of the power-of-attorney. There is no reason why the fact should not be proved by an affidavit made before a person competent to administer an oath. The Evidence Act is expressly declared not to apply to affidavits. 21 M. 492 (494). U

(3) *Ibid.*—Power-of-attorney by executors, proof of, by means of declaration of attesting witnesses before notary public.

A power-of-attorney given by the executors under a will to a certain person authorising him to apply for letters of administration, did not purport to have been executed in the presence of a notary public or any other of the persons designated in S. 85 of the Evidence Act; but with regard to the execution of the power by each of the executors, one of the attesting witness had made a declaration before the notary public as to his having witnessed the execution of the power, and a certificate signed and sealed by the notary public was appended to the declaration. *Held*, that the power-of-attorney was sufficiently proved by the fact of its execution having been proved by means of an affidavit made before a person competent to administer an oath. The provision contained in S. 85 of the Evidence Act is not of an exhaustive character so as to preclude other modes of proving the execution of a power-of-attorney. 21 M. 492. Y

(4) Declaration as to execution of power-of-attorney, before the Chief Magistrate, Glasgow—Certificate by Notary Public.

A declaration regarding the execution of a power-of-attorney, taken before the Chief Magistrate of Glasgow and authenticated not only by the certificate of the said Magistrate under the common seal of the City of Glasgow, but also by a certificate of a Notary Public, can be accepted as proof of the execution of the power.

(5) Documents held admissible.

(a) A power-of-attorney executed in British Honduras before a Notary Public was held to be provable in a Court of Equity by the production of the Notary's certificate under his hand and seal. *Armstrong v. Stockhan*, 24 L.J. Ch. 176; see, also, *Hayward v. Stephens*, 36 L.J. Ch. 135; Tay Ev., 10th Ed., S. 1566, p. 1126. W

(b) An affidavit, sworn in the United States, in the presence of a Notary Public and attested by him, with a certificate of the British Consul at New York, that the Notary filled that office and that his signature was entitled to credit, was admitted in evidence. *Hoggitt v. Ineff*, 24 L.J. Ch. 120, followed by *Cooke v. Wilby*, 25 Ch. D. 769; Tay. Ev., 10th Ed., S. 1566, p. 1126. X

(6) Identification of executant, whether necessary.

(a) When a document purporting to be a power-of-attorney and to have been executed before, and authenticated by a Notary Public, is produced before the Court, and affidavit of identification as to the person, purporting to make the power-of-attorney, being the person named therein, is unnecessary. 9 O.W.N. 986=33 C. 625. Y

1.—“*An instrument....evidence*”—(Concluded).

- (b) But should the Court be not satisfied as to its execution and authentication, it may, under R. 747 of the Calcutta High Court's Rules and Orders, call for further evidence. 9 C.W.N. 986=33 C. 625. * Z

(7) **Power-of-attorney signed by Deputy Collector for Deputy Commissioner, presumption as to.**

In a suit for possession of a plot of land in Fyzabad brought by the appellants against the respondents the power-of-attorney filed by the Government pleader on behalf of the respondent No. 1 purported to have been signed by the Deputy Collector “for the Deputy Commissioner.” The Settlement paper showed that the land was Nazul. *Held*, that in view of the general practice that in the absence of a Deputy Commissioner or a Collector from the head-quarters of his district one of his subordinates does sign and has authority to sign papers and documents on his behalf, it must be presumed that the Deputy Collector had authority to sign for the Deputy Commissioner. 7 O.C. 65. A

2.—“*Rules.*”**Instance of rules, etc.**

For instance of rules made and fees prescribed under this clause, see Bom. R. and O; Bur. R. M. B

Madras.**Judicial Notification, No. 293, dated 26th July, 1884.**

(Published in the Fort St. George Gazette, 19th August, 1884, p. 504, Part, I).

The following rule passed by the Honourable the Judges of the High Court of Judicature at Madras on the 10th day of July, 1884, and sanctioned by Government are published :—

It is hereby ordered that the following rules be passed under S. 4, clause (e) of Act VII of 1882, to take effect from the 1st day of September, 1884 :—

1. The Registrar on the Original Side shall have the custody of all instruments deposited in this Court under S. 4, clause (a) of Act VII of 1882.
2. A Register of all such documents shall be kept under the following headings :—

- (1) Description of document.
- (2) Date.
- (3) By whom deposited.
- (4) When deposited.

3. The following fees shall be taken by means of Court-fee stamps under section 4, clauses (a) (b) and (c) :—

For filing and registering every power and filing, every other document	...	...	...	...	Rs. 2
When the copy is presented by the party	...	...	...	...	„ 1
When the copy is prepared in the office, the usual charge for copying and Re. 1 for the certificate.					

For searching and inspecting each set of documents. „ 2

N.B.—For Madras High Court Fees Rules made under this Act and the Indian High Courts Act, 1861 (24 & 25, Vic., C. 104), see Fort St. George Gazette, 1902, Supplement dated 1st July, p. 1.

3.—“Cl. f.”

Legislative Changes.

- Cl. (f) was repealed by the Lower Burma Courts Act 1900 (VI of 1900), S. 48 and Sch. II. C

44 & 45, Vic. 5. A married woman, whether a minor or not, shall, by virtue of this
C. 41, S. 40. Act, have power, as if she were unmarried and of full
Power-of-attorney age, by a non-testamentary instrument, to appoint an
of married women¹. attorney on her behalf, for the purpose of executing
any non-testamentary instrument or doing any other act which she might
herself execute or do; and the provisions of this Act, relating to instru-
ments creating powers-of-attorney, shall apply thereto.

The section applies only to instruments executed after this Act comes into force.

(Notes).

General.

(1) Section added by whom?

This section was added by the Select Committee. (See Proceedings of the Council). D

(2) Source of section.

This section is copied from 44 & 45, Vic., C. 41, S. 40. (*Ibid.*) E

1.—“Power-of-attorney of married women.”.

Married women—English Law—Changes.

A married woman could not formerly appoint an attorney except, perhaps, with the consent of her husband [*Cooper's case*, 2 Leon 200; *Anon v. Hopkins*, Cro. Car. 165. See, also, *White v. Greenish*, 11 C. B. (N.S.), at p. 230.]. F

Therefore, any assurance of a married woman's interest under a power-of-attorney was inoperative. *Graham v. Jackson*, 6 Q.B. 889; *per Patterson, J.*; and *Dart, V & P. 592.* G

By the Conveyancing and Law of Property Act, 1881, 44 & 45, Vic., C. 41, S. 40, a married woman, whether an infant or not, is authorised to appoint an attorney, after 1881, to execute any deed, or do any other act which she might herself execute or do. *Goodeve's Real Property*, 5th Ed., p. 290. H

6. [Act XXVIII of 1866, S. 39, repealed.] Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

APPENDIX.

N.B.—The following cases, though not falling under any particular sections of this Act, are collected here for facility of reference, since they all relate to power-of-attorney.

I.—COURT FEES ACT—POWER-OF-ATTORNEY.

- (1) **Court Fees Act, Sch. II, Art. 10 (a)—Stamp Act, Sch. I, Art. 50 (b)—Power to vakil to obtain copies from Collector's office—Stamp.**

A power to a vakil authorizing him to present an application for copies to the Collector, falls under Art. 10, Sch. II of the Court Fees Act, and does not require to be stamped under Art. 50 of Sch. I of the Indian Stamp Act, 1879. 9 M. 146 (F.B.). I

- (2) **Power exempt under S. 19 (1) of the Court Fees Act, 1870.**

A power-of-attorney was executed by A employed in the "Queen's own Madras Sappers and Miners" in favour of B for defending a suit in which he (A) was concerned. The District Munsif, in whose Court the document was produced, impounded it and forwarded the same to the Sub-Collector who directed the levy of a Stamp Duty of Rs. 5 and penalty of Rs. 5 and requested the Commanding Officer of the regiment to call on A to pay the sum of Rs. 10. The latter officer pointed out that the document was exempt from stamp-duty, under Art. 2864 of the Army Regulations. *Held*, by the Madras High Court, that the document was exempt from court fees under S. 19 (i) of the Court Fees Act, VII of 1870. Mad. Bd's Pro. No. 270, 17th Oct. 1899. J

II.—REGISTRATION ACT, 1908—POWER-OF-ATTORNEY.

- (1) **Power-of-attorney recognizable for purposes of S. 32.**

(1) For the purposes of S. 32, the *following* powers-of-attorney shall alone be recognized, *namely*:—

- (a) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;
- (b) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate;
- (c) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of His Majesty or of the Government of India:

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, *namely*:—

- (i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;
 - (ii) persons who are in jail under civil or criminal process and
 - (iii) persons exempt by law from personal appearance in Court.
- (2) In the case of *every such person* the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has

II.—REGISTRATION ACT, 1908—POWER-OF-ATTORNEY—(Continued).

been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf. (S. 33, Registration Act, 1908.) K

(2) Proof of power-of-attorney.

A registered power-of-attorney need not be proved, as the registering officer is a Court within the meaning of S. 3 of the Indian Evidence Act. 14 C. 176. (17 C. 908, *Diss.*; 9 Bom. L.R. 401; 16 C.P.L.R. 99; 145, R.). L

(3) Stamp duty for executing power-of-attorney under S. 33 (a).

A power-of-attorney executed under the provisions of S. 33 (a) of the Indian Registration Act (VIII of 1871) may be written on a stamp of eight annas under Art. 13, Sch. II of the General Stamp Act (XVIII of 1869). 9 B.H.C. 43. See, also, Act II of 1899, Sch. I, Art. 48 (a). M

(4) Deed of sale by Buddhist wife whether requires registered power.

A deed of sale of joint property, executed by a Buddhist wife alone, does not require a registered power-of-attorney under S. 33, Registration Act. L.B.R. (1893-1900), 37. N

(5) Power-of-attorney by *purdanashin* lady.

(a) A *purdanashin* lady executed a power-of-attorney and signed it before its presentation to the Sub-Registrar. The Sub-Registrar went to her house, satisfied himself that she had voluntarily executed it and authenticated the document by a certificate to the effect that he had so satisfied himself. *Held* that the requirements of S. 33, Registration Act, were carried out. *Held*, further the presentation of a mortgage deed for registration by the agent, who acted under such a power-of-attorney, was a valid presentation. 7 A.L.J. 157. O

(b) When transactions entered into by *gosha* ladies are impeached, clear evidence, not merely of their signature, but of their means of knowledge as to what they were about, must be adduced. (*Ibid.*) See, also, 18 W.R. 238. P

(c) The mere fact of registration is not a sufficient corroboration of the evidence as to the validity of transactions entered into by *purdanashin* women, unless a mutation of names takes place, which, if carried out under a *muktearnama*, cannot tell against the *purdanashin* in the same way as it will against a person who can transact his own business personally. 17 W.R. 523 (P.C.). Q

II.—REGISTRATION ACT, 1908—POWER-OF-ATTORNEY—(Continued).

(6) What agents entitled to present documents for registration.

- (a) A certified copy of a decree was presented for registration under a power of attorney. It was not disputed that the copy of a decree was presented for registration by an agent, under a general power-of-attorney, which was not executed before, and authenticated by the Registrar, or Sub-Registrar within whose district or sub-district the agent's principal resided, as required by S. 33, Registration Act.

Held, that the persons legally entitled to present a document for registration, the persons "having title" to move the Registrar, are the persons specified in S. 32, Act III of 1877, and no others; that the agent was not a person legally entitled to move the officer, who registered the copy of a decree to register it; that, on the presentation by him of the copy to be registered, the Registrar could not legally exercise his jurisdiction; that the registration on such a presentation of the document could not be deemed to be a mere defect in the registering officer's procedure which was covered by S. 87, but was invalid; and that the document could not, therefore, be deemed to be registered within the meaning of Art. 179 of the Limitation Act. (See Ss. 32, 33, 60, 87, Registration Act); 6 O.C. 9, *dissenting from* 11 A. 319=9 A.W.N. 101. **R**

- (b) It is the circumstance that a person is the particular kind of agent described in S. 32, which entitles him to present the document for registration, and not the mere fact that he is an agent. 6 O.C. 9. **R**

- (c) The agent of the person mentioned in S. 32, Registration Act, 1908, if he is not duly authorised by a power-of-attorney, such as S. 33 of that Act declares shall alone be recognized, is not a person legally entitled to present the document for registration or a person "having title" to move the Registrar. 6 O.C. 9. **S**

(7) Presentation by agent having no subsisting power.

A person holding a power of attorney from an executant, who is dead, is not a proper person to present a document for registration. Registration effected at the instance of such a person is invalid, the irregularity not being cured by S. 87 of the Registration Act. 3 Bom. L.R. 114=5 O.W.N. 177=23 A. 233 (P.C.); *Compare* 11 A. 319 and 30 C. 265 (noted under S. 24, *supra*). **T**

(8) Registration under defective power of attorney, validity of.

One Daulat Ram, after selling certain immoveable property to Mussammat Ram Bai, the mother of the plaintiff, on the 6th August, 1900, sold the same property again on the 12th August, 1900, to the defendant. The latter sale-deed was duly registered on the 13th August, 1900, and on the same day, the sale-deed of the 6th August, 1900, was presented for registration by a pleader acting under a power-of-attorney from Musammat Ram Bai. The power of attorney admittedly was not executed or authenticated in accordance with the provisions of S. 33 of the Registration Act. The registering officer, however, took no notice of the defect; and after summoning Daulat Ram, who admitted execution, registered the sale-deed of the 6th August, on the 17th November, 1900. *Held* that the document of the 6th August had

II.—REGISTRATION ACT, 1908—POWER-OF-ATTORNEY—(Concluded).

not been legally registered, nor was the error of the Sub-Registrar a mere defect in procedure that could be cured by S. 87 of the Registration Act or by the fact that the executant, when summoned by the registering officer, consented to the registration of the sale-deed of the 6th August. A.W.N. (1906), 195 = 3 A.L.J. 748. U

(9) Presentation under power not mentioned in Act.

Where a deed is presented for registration under a power-of-attorney not recognised by S. 33, Registration Act, the registration does not become invalid the provisions of the section being merely directory. 1 A. 465 (P.C.); 4 A. 384. Y

(10) Indian Registration Act (III of 1877), Ss. 17, 21, 49—Attorney, power of, to create a charge on immoveable property.

Where a power of attorney was executed by A in favour of B to enable B to recover the rents and profits of the properties of which A was the administrator, in order to pay off an amount advanced by B to A as such administrator :

Held, that inasmuch as the document was entered in Book IV instead of Book I, it was not registered according to the provisions of the Registration Act, and therefore could not affect immoveable property. 7 C.L.J. 149 = 35 C. 845 = 12 C.W.N. 316 (7 C. 196, R.). W

(11) Power-of-attorney—Construction.

Where in a power of attorney it was provided that S as a general agent might sign for his principal, in his own pen, all deeds of mortgage and simple bonds and that he might get the same attested by witnesses on his own admission and might admit the execution thereof in the office of the Registrar : *Held* that the only authority conferred on the agent was that he should be in a position to sign for the principal the mortgage and simple bonds. This did not authorise the agent to enter into a mortgage transaction without knowledge of the principal. 6 C.L.J. 490. X

III.—RENT RECOVERY ACT (MADRAS)—POWER-OF-ATTORNEY.

Rent Recovery Act (Madras), VIII of 1865, S. 9—Power of attorney to exercise rights under Act—Power coupled with interest whether revocable—Acceptance by tenants of pattas tendered by shrotriendars with knowledge of grantee's right—Subsequent tender of pattas by grantee—Refusal thereof by tenants—Suit by grantee to enforce acceptance of pattas—Maintainability.

A shrotriendmar gave the plaintiff a power-of-attorney authorising him to exercise the rights of shrotriendmar under Act VIII of 1865. Sometime after, the shrotriendmar purported to revoke this power of attorney and gave notice to the defendants that, he had done so. He then tendered pattas to the defendants which they accepted. The plaintiff subsequently presented pattas for the same fasli and the defendants refused to accept them on the ground that they had already accepted pattas from the shrotriendmar. Hence the present suit to compel the defendants to accept pattas from the plaintiff. *Held*, that the power to the plaintiff, being coupled with an interest, was in law irrevocable and the defendants were liable to the plaintiff. 28 M. 301. Y

IV.—STAMP ACT, 1899—POWER-OF-ATTORNEY.

(1) **Power-of-attorney, defined.**

“Power-of-attorney” includes any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it. [Ind. Stamp. Act, 1899, S. 2 (21)]. Z

(2) **Instrument authorising a person to receive money on behalf of another.**

An instrument authorizing a person to receive on behalf of another such sums as should become due in the course of the execution of a certain work is not an assignment of money, but a power-of-attorney. 3 Bom. 49. A

(3) **For and in the name of.**

An instrument which authorises a person to receive certain money, and sign a receipt, but which does not empower him to do so in the name of the person executing the instrument, does not amount to a power-of-attorney. 3 Bom. L.R. 697. B

(4) **Sunnud to a gumastah.**

A—authorising the latter to collect rents and to sue for them is chargeable with stamp duty as a power-of-attorney. 1 B.L.R. 55 (F.B.). C

(5) **Deed in substance a power-of-attorney.**

A document executed by one person in favour of another, authorising the latter to recover, by suit or otherwise, certain sums of money due from the debtor of the former, containing a proviso to the effect that, out of the amount so received, the executee of the instrument might deduct the amount due to him by the executant and pay over the balance, is a power-of-attorney within the above definition. 7 B.H. C.A.C. 10. D

(6) **Power-of-attorney and not a declaration of trust.**

A gave B a general power-of-attorney for the management of A's estate, by which B bound himself to render an account to A of what he would do in regard to the estate. Ruled, that the instrument was a power-of-attorney and not a declaration of trust. Mad. Bd.'s Pro., No. 463, 11th March, 1887. E

(7) **Single transaction.**

When there is a power-of-attorney to do a particular act, followed by general words, those general words are not to be extended beyond what is necessary for doing the particular act. *Perry v. Hol*, (6 Jur. N.S. 661 ; 29 L.J. Ch. 677 ; 8 W.R. 578). F

(8) **Power-of-attorney—Construction.**

In construing powers-of-attorney, the special purpose for which the power is given is first to be regarded, and the most general words following the declaration of that special purpose, will be construed to be merely all such powers as are needed for its effectuation. (*Ibid.*) G

Power-of-Attorney—Stamp duty.

(1) **Power-of-attorney.**

Power-of-Attorney [as defined by S. 2 (21)], not being a PROXY (No. 52)—

(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents ;

... Eight annas.

IV.—STAMP ACT, 1899—POWER-OF-ATTORNEY—(Continued).

Power-of-Attorney—Stamp-duty—(Continued).

- (b) *when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882 ;* ... *Eight annas.*
- (c) *when authorizing one person or more to act in a single transaction other than the case mentioned in clause (a) ;* ... *One rupee.*
- (d) *when authorizing not more than five persons to act jointly and severally in more than one transaction or generally ;* ... *Five rupees.*
- (e) *when authorising more than five, but not more than ten persons to act jointly and severally in more than one transaction or generally ;* ... *Ten rupees*
- (f) *when given for consideration and authorising the attorney to sell any immoveable property ;* *The same duty as a Conveyance No. (23) for the amount of the consideration.*
- (g) *in any other case* ... *One rupee for each person authorized.*

N. B.—The term “registration” includes every operation incidental to registration under the Indian Registration Act, 1877.

Explanation.—For the purposes of this article more persons than one, when belonging to the same firm, shall be deemed to be one person.

[Art. 48, Stamp Act, 1899.]

(2) **Authority to receive money.**

A document was given to P by thirty-six persons jointly interested in a certain sum of money authorizing him to appear before a certain officer and receive payment thereof. *Held*, that the document was a power-of-attorney and that consequently the proper stamp duty was one rupee, leviable under the Indian Stamp Act, 1879, Sch. I, Art. 50 (b)—Reference under Stamp Act, S. 46. 9 Mad. 358 (F.B.)

(3) **Authorising to recover judgment-debt.**

A power-of-attorney authorizing the agent to recover a judgment-debt and for this purpose to take out execution of the decree as well as to bring a fresh suit if necessary, is an instrument which falls within Art. 48 (d) and should be stamped as if it related to more than one transaction. 3 Bom. L.R. 890.

(4) **Authority to indorse bills.**

The drawer of certain bills wrote a letter to B, in the following terms:—“I hereby authorize you to indorse or cause to be indorsed, my name, on three bills of exchange in your possession ; which said indorsements I hereby undertake shall be binding on me. And I further undertake to pay you that amount of the said bills when they become due,

IV.—STAMP ACT, 1899—POWER-OF-ATTORNEY—(Continued).

Power-of-Attorney—Stamp-duty—(Continued).

if they be not duly honoured at maturity." This was held to be a letter of attorney, requiring a stamp as such; and not, as insisted, a mere agreement coupled with an authority, and for which an agreement stamp would be sufficient. (*Ralker v. Remmett*, 10 Jur. 380; L.J. R.N.S.C.P. 174) Tilsley's Digest of Stamp Law, Ed. 1871, p. 371. K

(5) Authority to receive income and distribute profits.

Ten mirasidars of a village executed an instrument, authorizing the person therein mentioned to recover for them, from their mirasi rights, to cultivate their maniams, to distribute to them proportionately to their shares the profits of certain common land, &c. Held, that the instrument was a power of attorney and should bear a stamp of Rs. 5. Reference under Stamp Act, S. 16 (15 M 386, F.B.). L

(6) Mukhtarnamas and Vakalatnamas.

Attention is drawn to the fact that powers-of-attorney stamped under the Indian Stamp Act are of no use for enabling the holder to conduct suits in Court, unless they are held under the conditions mentioned in S. 37 (a) of the Code of Civil Procedure. The stamps required for Mukhtarnamas and Vakalatnams are prescribed in Sch. II, Art. 10 of the Court Fees Act. Any such power can only be presented for the conduct of any one case; there can be no power of attorney for the conduct of more cases than one except those falling under S. 37 (a) of the C.P.C., which should be written upon non-judicial stamps. A document, however, authorizing a vakil to apply for copies of records from a Collector's office, was held to be properly stamped with a Court-fee stamp under Art. 10 (a), Sch. II of the Court Fees Act, and not to require to be stamped as a power-of-attorney under the Indian Stamp Act (9 M. 146). The holder of a general power, where it expressly authorizes such a measure, can, by virtue thereof, file a special power, duly stamped with a Court-fee stamp, either in his own favour or in the name of any other, for the conduct of any one judicial or revenue case; but it is not necessary that a person acting under S. 37 (a) of the Code of Civil Procedure should do more than produce his general power of attorney; but the holder of such general power, if he does not file a special power, should file either a copy or the original of his general power in every case which he conducts (1. G. Letters, No. 1539, 10th March, 1870). The above remarks apply to powers-of-attorney for the conduct of cases in British Courts. Powers-of-attorney executed in British India for the conduct of cases in Foreign India fall under S. 3 of the Indian Stamp Act and must be written on non-judicial stamps according to the scale in Art. 48. Punj. Stamp Manual, 1900, p. 158, para 141. M

(7) Authorising holder to appear and do all acts necessary for execution of decree.

A document authorising the holder, who is not a certificated *mukhtar* or pleader, to appear and do all acts necessary for the execution of a decree transferred from the Punjab to Cawnpore for execution, is a power-of-attorney within the meaning of S. 2 (21) of the Stamp Act and chargeable as such with the duty of one rupee as provided by Art. 48 (g)

IV.—STAMP ACT, 1899—POWER-OF-ATTORNEY—(Continued).

Power-of-Attorney—Stamp-duty—(Continued).

of Sch. I. *Vakalatnamas and Mukhtarnamas*, as provided for in Art. 10 of Sch. II to the Court Fees Act, are excluded from the definition of the expression 'power-of-attorney.' 8 A.L.J. 378 (F.B.). N

(8) Authority to pay money.

A's attorney gives B a written authority to pay money for A. This authority does not require a stamp either as an agreement or as a power of attorney. (*Parker v. Dubois*, 7 C. & P. 406; 1 M. & W. 30; 1 Gale 366). O

(9) Power-of-attorney and not an agreement.

A letter addressed by a certain individual to another informing the latter that the writer was prepared to appoint him as his agent in connection with his railway contract on certain terms, and authorising him in the meantime to make agreements and sign on his behalf was not considered to be an agreement by the Board, but rather an offer to which a reply was required in order to constitute an agreement. The latter part of the letter in which the writer authorized the addressee to make agreements and sign them on his behalf was, however, 'considered to be a power-of-attorney which should be stamped under Art. 50 (e) (now Art. 48 (g)), Sch. I of Act I of 1879. Mad. Bd's Pro., No. 781, 7th Nov., 1889. P

(10) Power-of-attorney and not a declaration of trust—Appointment as Manager and Agent of a plantation.

By a document, A and others appointed one M. their Receiver and Agent over a casuarina plantation. It was contended that it was no declaration of trust as no trust was declared by the deed, and that it was not an appointment, since appointments are executed only under a power contained in some other deed. The Registrar considered that the words used therein "that the said parties thereto shall not or shall any of them, during the pendency of the suit, interfere with possession" constituted an implied trust, or in the alternative, an ordinary power-of-attorney and an agreement. *Held*, that the instrument was nothing more than a power-of-attorney, and was correctly stamped under Art. 50 (c) (now Art. 48 (d)); that as more than a single transaction was involved, Art. 50 (b) (now Art. 48 (c)), did not apply; and that the agreement was subsidiary to the transaction evidenced by the writing. *Held*, also, that a reference to definition of "Trust" in S. 3 of Act II of 1882, will explain why this document which related only to the management of property contained nothing in the nature of a trust. Mad. Bd's Pro., No. 1179, 26th April, 1888. Q

(11) Power-of-attorney—Act VIII of 1871—Act XVIII of 1869.

For a power-of-attorney executed under the provisions of S. 33 (a) of the Indian Registration Act, VIII of 1871 (*i.e.*, S. 33 of the present Registration Act, III of 1877), a stamp of eight annas is sufficient under Art. 18, Sch. II of the General Stamp Act (XVIII of 1869). Although the actual words used in that article imposed a duty of eight annas upon powers-of-attorney "to present for registration," still for purposes of stamp-duty, the words "to present for registration,"

IV.—STAMP ACT, 1899—POWER-OF-ATTORNEY—(Continued).

Power-of-Attorney—Stamp duty—(Continued).

do not mean the mere act of presentation, but include the further action—such as the admission of execution—required to complete registration. 9 Bom.H.C.A.C. 43. **R**

By the whole tenor of part VI of the Registration Act, and the coincidence of the wording on the margin of S. 32 with the wording of this No., it is clear that the words "presentation for registration" do not mean only the mere act of presentation, but include the further action, viz., admission of execution and all other acts required to complete registration. Bom. Reg. Cir. No. 11 of 1879 (Following In re Keshave Koshinath, 9 Bom. H.C.A.C. 43)—Stamps Law Rulings, Cir. No. 47, from the Supdt. of Stamps, C.P., to Deputy Commissioners 21st July, 1894. **S**

(12) Presenting for registration and admitting execution.

The proper stamp upon a power-of-attorney authorizing the Agent named therein to present a document for registration and to admit execution of the document is 8 annas.—Adv.-Gen.'s Opinion, recorded in Mad. G.O. No. 3005, Jud., 28th December, 1880. **T**

(13) Power-of-attorney for registration of document.

For a—in a Registration Office, a stamp of annas 8 is sufficient. 9 B.H.C.R. A. C. 43. **U**

(14) Authority to register a mortgage-deed and a lease.

A borrowed Rs. 300 from the Mylapur Fund, on mortgage of landed property with possession. The mortgagee leased the property to the mortgagor at a rent equal to the interest on the loan. *Held*, that these two are district transactions and cannot be regarded as parts of one and the same transaction, and a power-of-attorney granted for the registration of the documents should be not on a stamp of eight annas but one rupee. Mad. Bd's Pro., No. 3965, 20th November, 1884. **V**

(15) Presentation for registration and delivery to the claimant—Cls. (a) and (b), Art. 48, Stamp Act.

A power-of-attorney was executed in favour of A, authorizing him (1) to present a document for registration and (2) to deliver the same after registration to B. *Held* that the authority to deliver the document to the claimant was a separate transaction from procuring the registration of the document; that the two transactions mentioned in the document were distinct, and the document should bear a stamp of 1½ rupees under Art. 50 (a) and (b) (now Art. 48 (a) and (c). Mad. Bd's Pros. No., 1166, 25th April, 1883; confirmed by No. 1488, 29th May, 1883. **W**

(16) Cls. (c) and (d), Art. 48, Stamp Act.

There are under this Art. seven rates at which powers-of-attorney of different kinds are chargeable. The more common forms are (c) and (d), usually known as "special" and "general powers." The former authorizes the performance of a single act, and is charged one rupee. The latter authorizes "not more than five persons to act jointly and severally in more than one transaction or generally," and is charged five rupees; it, of course, includes the common case of one person only appointed to do more than one act. Punj. Stamp Manual, 1900, p. 156, para. 137. **X**

IV.—STAMP ACT, 1899—POWER OF-ATTORNEY—(Continued).**Power-of-Attorney—Stamp duty—(Continued).****(17) Power-of-attorney—Court-fee stamp—General stamp.**

Certain sums of money had been ordered to be refunded to 36 ryots in respect of 37 pottas. The ryots executed a joint document bearing a Court-fee adhesive stamp of the value of 8 annas authorizing one A to receive the money and to sign the refund bill. The High Court held that the instrument should bear a stamp of the value of one rupee under Art. 50 (b) (now Art. 48 (c), of the General Stamp Act, 1879. Every application made by a Vakil on behalf of another person to a Court or other authority must, if such application involves inquiry, be made by a Vakalatnamah or Mukhtarnamah, stamped under Art. 10 of the Court Fees Act; but if the application is one that involves no inquiry and be unconnected with a suit or judicial proceeding, the application must be made by a power-of-attorney stamped under Art. 50 (now Art. 48) of Act I of 1879. Reference under Stamp Act, S. 46 (9 Mad. 358 (F.B.). Mad. Bd's Pros. No. 978, 28th April, 1886. **Y**

(18) Authority to collect rents and to sue for them—Act X of 1862.

A sunnud which authorizes a gomasta to collect rents, and to sue for them, requires to be stamped. Such a sunnud requires a four rupee stamp under Art. 43, Sch. A, of Act X of 1862. 1 B.L.R. 55 (F.B.); 10 W. R. 39 (F.B.). **Z**

With reference to the above case, held by the Board, that it is necessary for all the gomastahs naibs. or other persons charged with the management of the collections from land to have a power-of-attorney authorizing them to act in such respect and that such powers as well as sunnuds granted by the Court of Wards to gomastahs empowered in its behalf should be stamped. Cal. Bd's Cir. No. 6 of April, 1876. **A**

(19) Power-of-attorney on behalf of absent applicants.

When applications are filed in any Court by any one of several persons, care should be taken that a duly stamped power-of-attorney is filed on behalf of the applicants authorizing him to act for the absentees. The omission of this precaution causes a loss of stamp revenue. All. Cir. Memo, of 2nd Sept. 1886. **B**

(20) Power required from a native chief.

A question arose whether the agent or representative of a Native Chief should be recognised on the faith of a letter from the chief without a duly stamped power-of-attorney, and be allowed to file an application on plain paper. Held, that the provisions of the stamp laws must be complied with by all persons proceeding under them who have not been specially exempted from the same. From the Bd. to the Commr. of Stamps, N.W.P. and Oudh (No. 162 N/ vs. R.—5b, 22nd May 1880). **C**

(21) Authority to draw pension from month to month.

A power-of-attorney authorizing B to draw A's pension from month to month, held to authorize B to act in more than one transaction or generally and as such to require a five-rupee stamp under Art. 50 (c) (now Art. 48 (d) Sch. I of Act I of 1879. From Board to Commr. of Stamps N.W. P. and Oudh, No. 239 vs. 98 5th April, 1887. **D**

IV.—STAMP ACT, 1899—POWER-OF-ATTORNEY—(Continued).

Power-of-Attorney—Stamp duty—(Continued).

(22) Power to take out execution and institute a suit.

A power-of-attorney, which enables the agent to recover a judgment-debt due to his principal, but which in prosecution of this object, authorizes the agent not only to take out execution of the decree already obtained, but also, if necessary, to institute a fresh suit against the judgment debt or for the recovery of the debt, falls under cl. (d) of Sch. 1 of the Stamp Act. The power was to sign in a single class of transactions, not a "single transaction." Mad. Bd. Pro. No. 227, 29th May, 1895. E

(23) Production and admission of execution of six deeds.

On a question as to the stamp-duty on a power-of-attorney authorizing a person to produce and acknowledge the execution of six sale-deeds, the Board held that all such documents should be held liable under Art. 1 of the Stamp Act. Mad. Bd.'s Pro. No. 333, 31st Oct. 1898. F

(24) Details of a single transaction—Several transactions.

A power-of-attorney engrossed on a one-rupee stamp paper executed by A (an arrack wholesale depot keeper), authorizing B to transact business of the wholesale depot for a year (i.e.) to procure arrack on payment of excise duty, to sell arrack in the depot; to sign permits; and to submit accounts to the talukhs and other officers) was produced before a tahsildar for attestation. The tahsildar considered that it was insufficiently stamped and that it should have been executed on a five-rupee stamp paper under Art. 50 (c) (now Art. 48 (d) of Sch. I of Act I of 1879. The Sub-collctor was of opinion that as the transactions covered by the power-of-attorney were the details of a single transaction, the document was duly stamped. Held, by the Board, that the document was clearly a general power-of-attorney, and was liable to a stamp duty of Rs. 5 under Art. 50 (c) now Art. 48 (d) of Sch. I, Act I of 1879. Mad. Bd.'s Pro. No. 412, 30th September, 1879. G

(25) Power-of-attorney by several persons.

A—authorising the executee thereof to do for them similar acts, in none of which they have a common interest, ought to be stamped as so many separate powers-of-attorney as there are executants. 2 M.L.J. 178 (F.B.). H

(26) S. 5, Act I of 1879 (Stamp Act)—Power-of-attorney executed in England—Fiscal requirements.

(g) It is not necessary for a Court in India to see whether a power-of-attorney, which has operation in this country, complies with the fiscal requirements of another country. If a power-of-attorney executed in England and intended to operate in British India be properly stamped according to the law in force in British India, the Courts in India need not inquire whether the same has been properly stamped according to the law of England. (Clegg v. Lewy, 3 Camp. 166, D; Bristow v. Sequille, 5 Ex. 275; James v. Catherwood, 3 D. and R. 190, 8 Bom. H.C. 169, F.) 23 C. 187. I

IV.—STAMP ACT, 1899—POWER-OF-ATTORNEY—(Concluded).**Power-of-Attorney—Stamp duty—(Concluded).**

- (b) Even if a power-of-attorney had been intended to operate partly in British India and partly in England, the fact of its not being stamped in accordance with the English Law which would not have rendered it, invalid, in so far as it was intended to operate in British India, if the requirements of the Indian Law had been complied with. (*Ibid.*) J

V.—SUCCESSION ACT, 1965—POWER-OF-APPOINTMENT.**(1) Power of appointment executed by general bequest.**

Unless a contrary intention shall appear by the Will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power ;

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power. [S. 78, The Indian Succession Act.] K

(2) Effect of S. 78, Succession Act.

The effect of S. 78, Act X of 1865 is to put property over which the testator has a general power of appointment in the same footing as his own property. Theob., 6th Ed., 235. L

(3) *Ibid.* as to onus of proof.

The onus of proving that the testator did not intend to execute the power is thrown on those who deny that the general bequest so operates. If Will., 10th Ed., 1200 (t) ; 1 Jarm., 5th Ed., 636. M

(4) Application of S. 78, Act X of 1865.

- i. S. 78, Act X of 1865 applies only to a general power, *i.e.*, a power which is general in regard to its objects, not a power that is general as regards the manner of its exercise. *Re Powoll's Trusts*, 39 L.J. Ch. 188. N

- ii. (a) S. 78, Act X of 1865, has no application to limited powers of appointment *i.e.*, powers limited as to the objects or class in whose favour they may be exercised. *Cloves v. Audrey*, 12 Beav. 604 ; *Humphrey v. Humphrey*, 36 L.T. 90 ; *Holyland v. Lewin*, 26 Ch. D. 266. O

- (b) As to such powers, the question whether a residuary devise or bequest operates as an execution of the powers is a question of the intention of the testator to be gathered from the terms of the particular Will and the surrounding circumstances. II Will., 10th Ed., 1203 (n). See also *Foulks v. Williams*, 42 Ch. D. 93. P

- iii. (a) S. 78, Act X of 1865, applies also to Wills of married women. *Thomas v. Jones*, 1 De G.J. and S. 63 ; *Noble v. Phillips*, 2 P. and D. 276. Q

- (b) Where a wife was given a power to appoint to such persons as she should "during coverture by deed or Will appoint and she made an appointment by a Will during the lifetime of her husband who died subsequently, held, the execution of the Will under coverture operated as a good exercise of the power, though she died discovert. *Vevir v. Armstrong*, (1909) 2 Ch. 297. R

V.—SUCCESSION ACT, 1865—POWER-OF-APPOINTMENT—(Continued).

iv. (a) S. 78, Act X of 1865, does not apply to the Will of a person domiciled abroad unless he shows an intention that it is to apply. *Tomlin v. Latter* (1900) 1 Ch. 442; *Poultier v. D'Este*, (1903) 1 Ch. 898. **S**

(b) But where an English power of appointment by Will is exercised and a Will executed in English form, though the appointer be domiciled abroad and the Will be not validly executed according to the law of domicile, the document is admissible as a Will for the purpose of the appointment, though not for other purposes. *Murphy v. Deichler*, 1909 A.C. 446. See, also, *Hunt v. Baker* (1908) W.N. 161. **T**

(5) A power to appoint amongst a class—Nature.

A power to appoint amongst a class, though it be of children is not such a general power as is contemplated by S. 78, Act X of 1865. *Cloves v. Audry*, 12 Beav. 604; *Pidgeley v. Pidgeley*, 1 Coll. 255; *Elliott v. Elliott*, 15 L.J. Ch. 393. **U**

(6) A power excluding a person—Nature.

(a) Nor is a power from the benefit of taking under which some person is excluded, within S. 78, Act X of 1865. *In re Byron*, (1891) 3 Ch. 474; *In re Reynolds*, 60 L. J. Ch. 807. **Y**

(b) But such a power might be within that section if the excepted person is dead when the power is exercised. *In re Byron, supra*. **W**

(7) A power requiring express reference in execution—Nature.

(a) So also a power which prescribes that in executing it, it is to be "expressly referred to" is not within S. 78, Act X of 1865. *In re Phillips*, 58 L.J. Ch. 448; *Phillips v. Cayley*, 59 L.J. Ch. 177. **X**

(b) A bequest of property "which I can dispose of by Will either as beneficially entitled thereto, or under any general power," is a valid exercise of a power requiring express reference. "Express" is distinguished from "implied" and is intended to exclude any exercise which can only be implied by virtue of S. 27 of the Wills Act, 1837, or in some other way. *Rolt v. Burdett*, (1908) W.N. 76. **Y**

(c) A power of appointment requiring express reference to it was held to be well exercised by a Will disposing of property "over which I shall have any power of disposition by Will." *Billi v. Lane*, (1908) 2 Ch. 581. **Z**

(8) What is sufficient execution of a general power.

(a) The appointment of a residuary legatee and the gift of a general pecuniary legacy are sufficient under S. 78, Act X of 1865 to execute a general power. *A.G. v. Brackenbury*, 1 H. and C. 782; *Shelford v. Acland*, 23 Beav. 10; *Re Wilkinson*, 4 Ch. 587. **A**

(b) A direction to executors to pay the testator's debts out of his personal estate operates as an execution of a general power in favour of the executor. *Wilday v. Barnett*, 6 Eq. 193. **B**

(c) Even a simple direction to pay debts without the appointment of an executor would have the same effect. *Laing v. Cowan*, 24 Beav. 112. **B-1**

(d) But the mere appointment of an executor would probably not be enough. Per Wickens, V.C. in *In re Davies' Trusts*, 13 Eq. 166. **C**

V.—SUCCESSION ACT, 1965—POWER-OF-APPOINTMENT—(Continued).

(9) Power of appointment up to a specified amount.

- A general gift will operate as an exercise of a power to appoint a sum not exceeding a specified amount to the extent of the amount specified. *Greene v. Gordon*, 34 Ch. D. 65. D

(10) Power contained in a settlement made by testator.

- A general gift in a Will will execute a power, whether the power is contained in a settlement made by the testator himself or by another person. *Maddick v. Marks*, 14 Ch. D. 422. E

(11) Power exercised by Will made prior to instrument creating it.

- (a) A general power may be exercised by a general gift in a Will made prior to the instrument creating the power. *Boyes v. Cook*, 14 Ch. D. 53; and see other cases cited in Theob., 6th Ed., 288. F
- (b) A general power of appointment may well be exercised by a Will executed previously to the creation of the power, and that too by a mere residuary gift. 31 R. 472=9 Bom. L.R. 488, F. *Stillman v. Wedon*, 16 Sim. 26; *Boyes v. Cook*, 14 Ch. D. 53; *Airey v. Bower*, 12 Ap. Cas. 263. G

Rule against Perpetuity, applied to powers of appointment.

(1) Power exercised within the limits of perpetuity is good.

- A power, though authorising an appointment which would be void for perpetuity, is valid if the appointment is kept within the proper limits. *Slark v. Bakyns*, 10 Ch. 35. H

(2) Character of appointee under a general power.

- Where the power is a general power to appoint by deed or Will, the appointee need only be capable of taking under the instrument exercising the power. *Rous v. Jackson*, 29 Ch. D. 521. I

(3) Character of appointee under a special power.

- (a) In the case of special powers, the appointee must be one capable of taking under the instrument creating the power. *In re Powell's Trusts*, 39 L.J. 188. J
- (b) The appointee under a special power must be competent to take immediately from the donor. 1 Jarm., 5th Ed., 259. K

(4) Gift in default of a power invalid for remoteness is valid.

- Where a power of appointment is given to arise upon an event beyond the limits of perpetuity, a gift in default of such appointment is valid. *Peacock v. Frigont*, (1893), 1 Ch. 54. L

(5) Power contingent on remote event, invalid.

- If the exercise of a power is made contingent on an event, which, may, by possibility happen beyond the limits of the rule, the mere fact that the contingency has happened earlier and has rendered the exercise of the power practicable within the prescribed limit does not validate the power. *Mukhopadhyay's Perpetuities*, 189: cited and applied in 4 M.L.T. 306=31 M. 517. M

V.—SUCCESSION ACT, 1865—POWER-OF-APPOINTMENT—(Concluded).

Rule against Perpetuity, applied to powers of appointment—(Concluded).

(6) Validity of appointment determined by state of things existing when appointment takes effect.

The question whether an appointment is valid, is determined by the state of things existing when the appointment takes effect. *Wilkinson v. Duncan*, 30 Beav. 111. *In re Halliran's Trusts*, (1904) 1 Ir. 452, cited in Theob., 6th Ed., 586. N

(7) Power of appointment under Hindu law—Limitations.

There is no principle of Hindu Law which forbids a bequest by way of a power of appointment subject to the same restrictions as the Hindu testamentary law imposes upon the testator himself *viz.*, that the appointment should be made, so that (i) the appointee might be ascertained when the event arose on which he was to take, and (ii) the appointee be a person, who was alive at the death of the testator. O

(8) Power of appointment, validity of.

A Hindu testator has a right to grant a power of appointment to a person named in his Will by which the final devolution of his estate should be regulated at the termination of a life estate created under the Will. 11 O.C. 271. P

THE POWERS-OF-ATTORNEY ACT, 1882.

TABLE OF CASES NOTED IN THIS ACT.

	I.L.R. Allahabad Series.	PAGE
1 A 465 (P C)	... Muhammad Ewaz v. Birj Lal	22
1 A 710 (F B)	... Seale v. Brown	8
4 A 384	... Ikbal Begum v. Sham Sundar	22
11 A 319	... Hardei v. Ram Lal	21
28 A 238 (P C)	... Mujib-un-nissa v. Abdur Rahim	21
	I.L.R. Bombay Series.	
3 B 49	... Bhagvandas Kishoredas v. Abdul Husein Mahomed Ali	28
10 B 18	... Keshav Bapuji v. Narayan Shamrav	7
14 B 590 (593)	... Malukcharj Bin Gyanmal v. Shan Moghan Vardraj.	6, 7
16 B 492	... Javerbai v. Kablibai	33
31 B 472	... Dinshaw Sorabji Mody v. Dinshaw Sorabji Mody...	32
	I.L.R. Calcutta Series.	
7 C 196	... Najibulla Mulla v. Nusir Mistri	22
7 C 253	... Poorna Chunder Sen v. Prosunno Coomar Dass	9
8 C 317	... Luchmee Chund v. The Bengal Coal Company Ltd.	7
8 C 934	... Watson v. Jonmenjoy Coondoo	6, 7, 10
9 C 1 (9)	... Jupna Dass v. Eckford	8
10 C 901 (P C)	... Jonmenjoy Coondoo v. George Alder Watson	6, 7, 10
16 C 776 (779)	... <i>In the goods of</i> A. J. Primrose	15
17 C 909	... Salimatul Fatima v. Koylashpoti Narain Singh	20
23 C 187	... <i>In the goods of</i> P. H. McAdam	29
30 C 265	... Mohendra Nath Mookerjee v. Kali Prashad Johuri.	21
33 C 625	... <i>In the goods of</i> Mylne	16, 17
35 C 845	... Indra Bibi v. Jain Sirdar Ahiri	22
	I.L.R. Madras Series.	
9 M 146 (F B)	... Reference under Stamp Act, S. 46	19, 25
9 M 358 (F B)	... Reference under Stamp Act, S. 46	24, 28
15 M 386	... Reference under Stamp Act, S. 46	25
21 M 492 (494)	... <i>In re</i> Sladen	16
28 M 301	... Rajarathna Naidu v. Narasimba Chariar	22
31 M 517	... Sivasankara Pillai v. Subramania Pillai	32
	North-West Provinces High Court Reports.	
1 N W P 277	... Choonee Sukul v. Hur Pershad	5
2 N W P 60	... Juggun Nath v. Beck	5
2 N W P 415	... Hursarun Singh v. Purshun Singh	5
6 N W P 210	... Thakoor Pershad v. Kalka Pershad	7
	Allahabad Law Journal.	
3 A L J 743	... Ishri Prasad v. Baijnath	22
6 A L J 462	... Nand Dufarey Lal v. Chand Behary Lal	13
7 A L J 157	... Ohhutan Lal v. Shiam Prasad	20
8 A L J 373 (F B)	... Parmanand v. Sat Prasad	26

TABLE OF CASES.

Allahabad Weekly Notes.			PAGE
9 A W N•101 ..	Hardei v. Ram Lal	...	21
A W N (1906) 195...	Ishri Prasad v. Baijnath	...	22
Bombay High Court Reports.			
7 B H C (A C) 10.	Pestanji Mancharji Wadia v. Joseph Matchett	...	12, 23
8 B H C 169 ..	Megji Hansraj v. Ramji Joita	...	29
9 B H C (A.C.) 43 ..	<i>In re</i> Keshav Kasinath	...	20, 27
Bombay Law Reporter			
3 Bom L R 114 ...	Mujib-un-nissa v. Abdul Rahim	...	21
3 Bom L R 697 ...	Tribhowan Manchand v. Pandurang Vaman	...	23
3 Bom L R 890 ...	<i>In re</i> Gopalrao Mukund Buti	...	24
9 Bom L R 401 ...	Thama v. Govind Bilal	...	20
9 Bom L R 489 ..	Dinshaw Sorabji Mody v. Dinshaw Sorabji Mody	...	32
Calcutta Law Journal.			
6 C L J 490 (491, 500) ..	Roy Radha Kissen v. Nauratan Lall	...	7, 10
6 C L J 639 ...	Ghasiram v. Raja Mohan Bikram Sha	...	7
7 C L J 149 ...	Srimati Indra Bibi v Jain Sirdar Ahiri	...	22
Calcutta Weekly Notes.			
5 C W N 177 ..	Musst. Mujib-un-Nisa v. Abdul Rahim	...	21
8 C W N 362 ..	Purna Chandra Bakshi v. Nobin Chandra Gango- padhya	...	9
9 C W N 986 ..	<i>In the goods of</i> W. H. Mylne	...	16, 17
12 C W N 316 ..	Srimati Indra Bibi v. Jain Sirdar Ahiri	...	22
13 C W N 1190 ..	Jogendra Chunder Dutt v. Apurna Dassj	...	9
Calcutta Law Reports.			
8 C L R 433* ..	Purna Chunder Sen v. Prosunno Cumar Dass	...	9
11 C L R 581 ..	Hublal Sukul v. Ramgoti Dey Roy	...	11
13 C L R 247 ..	Tyebunnessa v. Kaniz Fatima	...	11
Bengal Law Reports.			
1 B L R 55 (F B) ..	Raghu Nandan Thakur v. Ram Charan Kapali	...	23, 28
Sutherland's Weekly Reporter.			
10 W R 39 (F B) ...	Raghoo Nundun Thakoor v. Ram Chunder Kupali...	...	28
17 W R 523 (P C) ..	Syud Fuzzul Hossein v. Amjud Ali Khan	...	20
19 W R 238 ..	Doolee Chand v. Musst. Oomda Khanum	...	20
W R (1879) 68 ..	Beer v. National Bank of India	...	11
Madras High Court Reports.			
2 M H C 177 ..	Sausone Ezekiel Judah v. Addi Raja Queen Bibi	...	10
Madras Law Journal.			
2 M L J 178 (F B).	Reference under Stamp Act, S. 46	...	29
Madras Law Times.			
4 M L T 306 ..	Sivasankara Pillai v. Subramania Pillai	...	32
Punjab Record.			
84 P R (1905)† ..	The Secretary of State for India in Council v. Mehr Baksh	...	12

* 8 C L R 433 ought to be 443.

† This is wrongly printed as 84 P L R (1905).

Punjab Law Reporter.		PAGE
160 P L R 1905 ...	The Secretary of State for India in Council v. Mehr Bakhsh ...	12
Oudh Cases.		
1 O C 159	Sahai Lal v. Lalta Pershad ...	11
6 O C 9	Atal Bihari Lal v. Hiwanchal Singh ...	21
7 O C 65	Saiyad Mohamed Haidar v. Secretary of State for India in Council ...	17
11 O C 271	Narayan Singh v. Lal Ramesh Singh ...	33
Moore's Indian Appeals.		
5 M I A 1	The Bank of Bengal v. James William Macleod ...	8, 10
5 M I A 27	The Bank of Bengal v. Cristopher George Fagan ...	6, 7, 8, 10
Law Reports, Indian Appeals.		
11 I A 94	Jonmenjoy Coondoo v. George Alder Watson ...	10
Indian Cases.		
2 Ind Cas 305 *	Nand Dularoy Lal v. Chand Bihari Lal ...	13
3 Ind Cas 330	Bindubashini Dasi v. Giridhari Lal Roy ...	7, 11
Upper Burmah Rulings.		
U B R (1892-96), 525*	Devarayan Chetty v. Raman Chetty ...	8
U B R (1902) 3rd Qr, Power of Attorney, 5 (7)	Ebrahim Mahomed Petail v. Arunachellum Chetty.	6, 7
Lower Burmah Rulings.		
L B R (1893-1900) 37	Maung Tun Myat v. Raman Chetty ...	20
Central Provinces Law Reports.		
15 C P L R 65	The Agent, Bengal-Nagpur Railway v. Jagannath Ramchandra ...	12
16 C P L R 99	Sadhu Gour v. Mt. Patango ...	20
16 C P L R 145	Sonsa Chamar v. Puransing Rajput ...	20
Miscellaneous.		
12 Ap Cas 263	Airey v. Bower ...	32
Cro Car 165	Anon v. Hopkins ...	18
Fulton, 72	Anonymous Case ...	15
24 L J Ch 176	Armstrong v. Stockhan ...	16
1 H and C 782	A. G. v. Brackenbury ...	31
(1908) 2 Ch 531	Billi v. Lane ...	31
14 Ch D 53	Boyes v. Cook ...	32
24 Beav 27	Bridges v. Longman ...	9
5 Ex 275	Bristow v. Sequille ...	29
(1893) A C 170	Bryant v. La Banque Du Peuple ...	7
(1891) 3 Ch 474	Byron, <i>In re</i> ...	31
8 Eq 569	Chawner's Will, <i>In re</i> ...	9
3 Camp 166	Clegg v. Lewy ...	29
12 Beav 604	Cloves v. Audry ...	30, 31
9 Co 75	Combe's Case ...	9

TABLE OF CASES.

	Miscellaneous—(Concluded).	PAGE
29 Beav 423	... Cook v. Dawson	9
25 Ch D 769	... Cooke v. Wilby	16
2 Leon 200	... Cooper's Case	18
18 Eq 166	... Davies' Trusts, <i>In re</i>	31
15 L J Ch 393	... Elliot v. Elliot	31
42 Ch D 93	... Foulks v. Williams	30
6 Q B 839	... Graham v. Jackson	18
34 Ch D 65	... Greene v. Gordon	32
36 L J Ch 135	... Hayward v. Stephens	16
24 L J Ch 120	... Hoggit v. Ineff	16
26 Ch D 266	... Holyland v. Lewin	30
36 L T 90	... Humphrey v. Humphrey	30
(1908) W N 161	... Hunt v. Baker	31
3 D and R 190	... James v. Chatherwood	29
24 Beav 112	... Laing v. Cowan	31
Morton, 370	... Macgowan, <i>In the goods of</i>	15
14 Ch D 422	... Maddick v. Marks	32
1909 A C 446	... Murphy v. Deichler	31
2 P and D 276	... Noble v. Phillips	30
1 Gale 366	... Parker v. Dubois	26
1 M and W 30	...	26
7 C and P 406	...	26
(1893) 1 Ch 54	... Peacock v. Frigont	32
29 L J Ch 677	... Perry v. Hol	23
6 Jur N S 661	... — v. —	23
58 L J Ch 448	... Phillips, <i>In re</i>	31
59 L J Ch 177	... — v. Cayley	31
1 Coll 255	... Pidgeley v. Pidgeley	31
(1903) 1 Ch 898	... Poulter v. D'Este	31
39 L J 188	... Powell's Trusts, <i>In re</i>	32
39 L J Ch 188	...	30
12 A D and E 559...	Queen v. Kelk	4
L J R N S C P 174.	Ralker v. Remmett	25
10 Jur 380	... — v. —	25
60 L J Ch 807	... Reynolds, <i>In re</i>	31
(1908) W N 76	... Rolt v. Burdett	31
29 Ch D 521	... Rous v. Jackson	32
18 Beav 21	... Russel v. Plaice	9
23 Beav 10	... Shelford v. Acland	31
10 Ch 35	... Slark v. Bakyns	32
5 C B 917	... Smart v. Sanders	6
16 Sim 26	... Stillman v. Wedon	32
1 De G J and S 68	... Thomas v. Jones	30
(1900) 1 Ch 442	... Tomlin v. Latter	31
(1909) 2 Ch 297	... Vevir v. Armstrong	30
15 L J C P 174	... Walker v. Remmicks	4
11 C B (N S) at p 230	White v. Greenish	18
6 Eq 193	... Wilday v. Barnett	31
4 Ch 587	... Wilkinson, <i>Re</i>	31
30 Beav 111	... — v. Duncan	33
Cc Lott 51 (52)	...	6

THE POWERS-OF-ATTORNEY ACT, 1882.

TABLE OF CASES NOTED IN THIS ACT.

I.L.R. Allahabad Series.			PAGE
1 A 465 (P G)	... Muhammad Ewaz v. Birj Lal	...	22
1 A 710 (F B)	... Seale v. Brown	...	8
4 A 384	... Ikbal Begum v. Sham Sundar	...	22
11 A 319	... Hardei v. Ram Lal	...	21
23 A 233 (P G)	... Mujib-un-nissa v. Abdur Rahim	...	21
I.L.R. Bombay Series.			
3 B 49	... Bhagvandas Kishoredas v. Abdul Husein Mahomed Ali	...	23
10 B 18	... Keshav Bapuji v. Narayan Shamrav	...	7
14 B 590 (593)	... Malukchand Bin Gyanmal v. Shan Moghan Vardraj.	...	6, 7
16 B 492	... Javerbai v. Kablibai	...	33
31 B 472	... Dinshaw Sorabji Mody v. Dinshaw Sorabji Mody...	...	32
I.L.R. Calcutta Series.			
7 C 196	... Najibulla Mulla v. Nusir Mistri	...	22
7 C 253	... Poorna Chunder Sen v. Prosunno Coomar Dass	...	9
8 C 317	... Luchmee Ohund v. The Bengal Coal Company Ltd.	...	7
8 C 934	... Watson v. Jonmenjoy Coondoo	...	6, 7, 10
9 C 1 (9)	... Jumna Dass v. Eckford	...	8
10 C 901 (P G)	... Jonmenjoy Coondoo v. George Alder Watson	...	6, 7, 10
16 C 776 (779)	... <i>In the goods of</i> A. J. Primrose	...	15
17 C 903	... Salimatul Fatima v. Koylashpoti Narain Singh	...	20
23 C 187	... <i>In the goods of</i> P. H. McAdam	...	29
30 C 265	... Mohendra Nath Mookerjee v. Kali Prashad Johuri.	...	21
33 C 625	... <i>In the goods of</i> Mylne	...	16, 17
35 C 845	... Indra Bibi v. Jain Sirdar Ahiri	...	22
I.L.R. Madras Series.			
9 M 146 (F B)	... Reference under Stamp Act, S. 46	...	19, 25
9 M 358 (F B)	... Reference under Stamp Act, S. 46	...	24, 28
15 M 386	... Reference under Stamp Act, S. 46	...	25
21 M 492 (494)	... <i>In re</i> Sladen	...	16
28 M 301	... Rajarathna Naidu v. Narasimha Chariar	...	22
31 M 517	... Sivasankara Pillai v. Subramania Pillai	...	32
North-West Provinces High Court Reports.			
1 N W P 277	... Choonee Sukul v. Hur Pershad	...	5
2 N W P 50	... Juggun Nath v. Beck	...	5
2 N W P 415	... Hursarun Singh v. Purshun Singh	...	5
6 N W P 210	... Thakoor Pershad v. Kalka Pershad	...	7
Allahabad Law Journal.			
3 A ^o L J 743	... Ishri Prasad v. Baijnath	...	22
6 A L J 462	... Nand Dularey Lal v. Chand Behary Lal	...	13
7 A L J 157	... Chhutan-Lal v. Shiam Prasad	...	20
8 A L J 378 (F B)...	... Parmanand v. Sat Prasad	...	26

TABLE OF CASES.

Allahabad Weekly Notes.			PAGE
9 A W N 101 ...	Hardei v. Ram Lal	...	21
A W N (1906) 195...	Ishri Prasad v. Baijnath	...	22
Bombay High Court Reports.			
7 B H C (A C) 10.	Pestnaji Mancharji Wadia v. Joseph Matchett	...	12, 23
8 B H C 169 ...	Megji Hansraj v. Ramji Joita	...	29
9 B H C (A.C.)			
43 ...	<i>In re</i> Keshav Kasinath	...	20, 27
Bombay Law Reporter.			
3 Bom L R 114 ...	Mujib-un-nissa v. Abdul Rahim	...	21
3 Bom L R 697 ...	Tribhowan Manchand v. Pandurang Vaman	...	23
3 Bom L R 890 ...	<i>In re</i> Gopalrao Mukund Buti	...	24
9 Bom L R 401 ...	Thama v. Govind Bilal	..	20
9 Bom L R 488 ...	Dinshaw Sorabji Mody v. Dinshaw Sorabji Mody	...	32
Calcutta Law Journal.			
6 C L J 490 (491.			
500) ...	Roy Radha Kissen v. Nauratan Lall	...	7, 10
6 C L J 639 ...	Ghasiram v. Raja Mohan Bikram Sha	...	7
7 C L J 149 ...	Srimati Indra Bibi v. Jain Sirdar Ahiri	...	22
Calcutta Weekly Notes.			
5 C W N 177 ...	Musst. Mujib-un-Nisa v. Abdul Rahim	...	21
8 C W N 362 ...	Purna Chandra Bakshi v. Nobin Chandra Gango- padhya	...	9
9 C W N 986 ...	<i>In the goods of</i> W. H. Mylne	...	16, 17
12 C W N 316 ...	Srimati Indra Bibi v. Jain Sirdar Ahiri	...	22
13 C W N 1190 ...	Jogendra Chunder Dutt v. Apurna Dassi	...	9
Calcutta Law Reports.			
8 C L R 433* ...	Purna Chunder Sen v. Prosunno Cumar Dass	...	9
11 C L R 581 ...	Hublal Sukul v. Ramgoti Dey Roy	...	11
13 C L R 247 ...	Tyebunnessa v. Kaniz Fatima	...	11
Bengal Law Reports.			
1 B L R 55 (F B) ...	Raghu Nandan Thakur v. Ram Charan Kapali	...	23, 28
Sutherland's Weekly Reporter.			
10 W R 39 (F B) ...	Raghoo Nundun Thakoor v. Ram Chunder Kupali...		28
17 W R 523 (P C) ...	Syud Fuzzul Hossein v. Amjud Ali Khan	...	20
18 W R 238 ...	Doolee Chand v. Musst. Omda Khanum	...	20
W R (1873) 68 ...	Beer v. National Bank of India	...	11
Madras High Court Reports.			
2 M H C 177 ...	Sausone Ezekiel Judah v. Addi Raja Queen Bibi	...	10
Madras Law Journal.			
2 M L J 178 (F B).	Reference under Stamp Act, S. 46	...	29
Madras Law Times.			
4 M L T 306 ...	Sivasankara Pillai v. Subramania Pillai	...	32
Punjab Record.			
84 P R (1905)† ...	The Secretary of State for India in Council v. Mehr Baksh	...	12

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TABLE OF CASES.

	Punjab Law Reporter.	PAGE
160 P L R 1905	The Secretary of State for India in Council v. Mehr Bakhsh ...	12
	Oudh Cases.	
1 O C 159	... Sahai Lal v. Lalta Pershad ...	11
6 O C 9	... Atal Bihari Lal v. Iliwanchal Singh ...	21
7 O C 65	... Saiyad Mohamed Haidar v. Secretary of State for India in Council ...	17
11 O C 271	... Narayan Singh v. Lal Ramesh Singh ...	33
	Moore's Indian Appeals.	
5 M I A 1	... The Bank of Bengal v. James William Macleod ...	8, 10
5 M I A 27	... The Bank of Bengal v. Cristopher George Fagan ...	6, 7, 8, 10
	Law Reports, Indian Appeals.	
11 I A 94	... Jonmenjoy Coondoo v. George Alder Watson ...	10
	Indian Cases.	
2 Ind Cas 305 *	... Nand Dularey Lal v. Chand Bihari Lal ...	13
3 Ind Cas 330	... Bindubashini Dasi v. Gridhari Lal Roy ...	7, 11
	Upper Burmah Rulings.	
U B R (1892-96), 525	... Devarayan Chetty v. Raman Chetty ...	
U B R (1902) 3rd Qr, Power of Attorney, 5 (7)	... Ebrahim Mahomed Patail v. Arunachellum Chetty.	6, 7
	Lower Burmah Rulings.	
L B R (1893-1900) 37	... Maung Tun Myat v. Raman Chetty ...	20
	Central Provinces Law Reports.	
15 C P L R 65	... The Agent, Bengal-Nagpur Railway v. Jagannath Ramchandra ...	12
16 C P L R 99	... Sadhu Gour v. Mt. Patango ...	20
16 C P L R 145	... Sonsa Chamar v. Puransing Rajput ...	20
	Miscellaneous.	
12 Ap Cas 263	... Airey v. Bower ...	32
Cro Car 165	... Anon v. Hopkins ...	18
Fulton, 72	... Anonymous Case ...	15
24 L J Ch 176	... Armstrong v. Stockhan ...	16
1 H and C 782	... A. G. v. Brackenbury ...	31
(1908) 2 Ch 581	... Billi v. Lane ...	31
14 Ch D 53	... Boyes v. Cook ...	32
24 Beav 27	... Bridges v. Longman ...	9
5 Ex 275	... Bristow v. Sequille ...	29
(1893) A C 170	... Bryant v. La Banque Du Peuple ...	7
(1891) 3 Ch 474	... Byron, <i>In re</i> ...	31
8 Eq 569	... Chawner's Will, <i>In re</i> ...	9
3 Camp 166	... Clegg v. Lewy ...	29
12 Beav 604	... Cloves v. Audry ...	30, 31
9 Co 75	... Combe's Case ...	9

This has been wrongly printed as 2 Ind. Cas. 805.

TABLE OF CASES.

Miscellaneous—(Concluded).		PAGE
29 Beav 123	... Cook v. Dawson	9
25 Ch D 769	... Cooke v. Wilby	16
2 Leon 200	... Cooper's Case	18
18 Eq 166	... Davies' Trusts, <i>In re</i>	31
15 L J Ch 393	... Elliot v. Elliot	31
42 Ch D 93	... Foulks v. Williams	30
6 Q B 839	... Graham v. Jackson	18
34 Ch D 65	... Greene v. Gordon	32
36 L J Ch 135	... Hayward v. Stephens	16
24 L J Ch 120	... Hoggit v. Ineff	16
26 Ch D 266	... Holyland v. Lewin	30
36 L T 90	... Humphrey v. Humphrey	30
(1908) W N 161	... Hunt v. Baker	31
3 D and R 190	... James v. Chatherwood	29
24 Beav 112	... Laing v. Cowan	31
Morton, 370	... Macgowan, <i>In the goods of</i>	15
14 Ch D 422	... Maddick v. Marks	32
1909 A C 446	... Murphy v. Deichler	31
2 P and D 276	... Noble v. Phillips	30
1 Gale 366	... Parker v. Dubois	26
1 M and W 30	...	26
7 C and P 406	...	26
(1893) 1 Ch 54	... Peacock v. Frigont	32
29 L J Ch 677	... Perry v. Hol	23
6 Jur N S 661	... — v. —	23
58 L J Ch 448	... Phillips, <i>In re</i>	31
59 L J Ch 177	... — v. Cayley	31
1 Coll 255	... Pidgeley v. Pidgeley	31
(1903) 1 Ch 898	... Poulter v. D'Este	31
39 L J 188	... Powell's Trusts, <i>In re</i>	32
39 L J Ch 188	...	30
12 A D and E 559	... Queen v. Kelk	4
L J R N S C P 174	... Raker v. Remmett	25
10 Jur 380	... — v. —	25
60 L J Ch 807	... Reynolds, <i>In re</i>	31
(1908) W N 76	... Rolt v. Burdett	31
29 Ch D 521	... Rous v. Jackson	32
18 Beav 21	... Russel v. Plaice	9
23 Beav 10	... Shelford v. Acland	31
10 Ch 35	... Slark v. Bakyns	32
5 C B 917	... Smart v. Sanders	6
16 Sim 26	... Stillman v. Wedon	32
1 De G J and S 63	... Thomas v. Jones	30
(1900) 1 Ch 442	... Tomlin v. Latter	31
(1909) 2 Ch 297	... Vevir v. Armstrong	30
15 L J C P 174	... Walker v. Remmicks	4
11 C B (N S) at p 230	... White v. Greenish	16
6 Eq 193	... Wilday v. Barnett	31
4 Ch 587	... Wilkinson, <i>Re</i>	31
30 Beav 111	... — v. Duncan	33
Cc Lott 51 (52)	...	6

THE POWERS OF ATTORNEY ACT, 1882.

INDEX.

Note 1 :—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2 :—S. in Brevier Roman denotes the section.

Act, Powers-of-attorney—Statement of Objects and Reasons, *A*, 3.
 „ „ —Proceedings in Council, *B*, 3.
 „ „ —Object of the Powers-of-Attorney Bill, *C—F*, 3, 4.
 Places where the Powers-of-attorney Act has been declared in force, *G*, 12.

Imperial Acts.

Act X of 1862, Authority to collect rents and to sue for them, *Z*, *A*, 28.
Act I of 1879 (Stamp), S. 5—Power-of-attorney executed in England—Fiscal requirements, *I*, 29.

Madras Acts.

Act VIII of 1865 (Rent Recovery), S. 9—Power-of-attorney to exercise rights under Act—Power coupled with interest whether revocable—Acceptance by tenants of pattas tendered by shrotriendars with knowledge of grantee's right—Subsequent tender of pattas by grantee—Refusal thereof by tenants—Suit by grantee to enforce acceptance of pattas—Maintainability, *Y*, 22.
Agent, Power-of-attorney, *Y*, 11.
Appeal, Summary dismissal of an,—Special Power-of-attorney—Stamped paper for special Power-of-attorney, *F*, 12.
Appointee, defined, *L*, 8.
Appointer, defined, *K*, 8.

B

Bank, Bank Manager—Private Agent—*Bona-fides*, *Z*, 11.

C

Certificate, by Notary Public,—Declaration as to execution of Power-of-attorney before the Chief Magistrate, Glasgow, 16.
Contract Act (IX of 1872), S. 25—Attorney, power of —*Mooktarnama*—Bond to secure barred debt whether binding, *A*, 11.
Court-Fees Act, Sch. II, Art. 10 (*a*)—Stamp Act, Sch. I, Art. 50 (*b*)—Power to vakil to obtain copies from Collector's office—Stamp, *I*, 19.
 Power to exempt under S. 19 (1) of the, *J*, 19.
Court-fee stamp, Power-of-attorney—General stamp, *Y*, 28.

D

Death, Payment by attorney under power, without notice of death, &c., good, S. 3, 13, 14.
Deed of sale, by Buddhist wife whether requires registered power, *N*, 20.
Deposit, of original instruments creating Powers-of-attorney, S. 4, 14—18.
Donee of power, who is a, *J*, 5.

Donee of a Power-of-attorney, Execution under Power-of-attorney, S. 2, 12, 13.

Meaning, J, 13.

Mode of execution by attorney, K, 13.

E

English Trustee Act, 1893, Protection, O, P, 14.

Executant, Identification of, whether necessary, Y, Z, 16, 17.

Executors, Power-of-attorney by, proof of, by means of declaration of attesting witnesses before notary public, V, 16.

Executor dative qua father, Evidence Act, S. 85—Power-of-attorney—Application for letters of administration, T, U, 15, 16.

Evidence, Power-of-attorney—Execution to show that principal is alive—Consideration, P—U-1, 6.

Evidence Act, S. 3—Proof of Power-of-attorney, L, 20.

Presumption as to Powers-of-attorney, S, 15.

S. 85—*Executor dative qua father*—Power-of-attorney—Application for letters of administration, T, U, 15, 16.

Power-of-attorney, by executors, proof of, by means of declaration of attesting witnesses before notary public, V, 16.

G

Government, Suit by—Power-of-attorney to institute suit not necessary, E, 12.

Government securities, Pledge of, by agent for unauthorised loan—Suit for recovery of securities by principal from transferee—Negotiation, U—X, 10.

H

High Court, Deposit of original instruments creating powers of attorney, S. 4, 14—18.

Hindu Law, Power of appointment under—Limitations, O, 33.

J

Judicial Notification, No. 293, dated 26th July, 1884, 17.

L

Letters of administration, Evidence Act, S. 85—*Executor dative qua father*—Power-of-attorney—Application for letters of administration, T, U, 15, 16.

Letter of attorney, Power-of-attorney—Procurator, M, 5.

M

Madras, Judicial Notification, No. 293, dated 26th July, 1884, 17.

Married women, Power-of-attorney of, S. 5, 18.

English Law—Changes, F—H, 18.

Mooktarnama, Contract Act IX of 1872, S. 25—Attorney, power of—Bond to secure barred debt whether binding, A, 11.

Principal and agent—Power-of-attorney—Authority of agent—Limitation of gift, B, 11.

Mukhtarnamas, and vakalatnamas, M, 25.

N

Notary public, Power-of-attorney by executors, proof of, by means of declaration of attesting witnesses before, V, 16.

Declaration as to execution of Power-of-attorney, before the Chief Magistrate, Glasgow—Certificate by, 16.

Notice, Payment by attorney under power, without, of death, &c., good, S. 3, 13, 14.

O

Onus, Effect of S. 78, succession as to, of proof, M, 30.

P

Pardanashin lady, Power-of-attorney to husband, *C*, 11.

Power-of-attorney by, *O—Q*, 20.

Payment, by attorney under power, without notice of death, &c., good, *S*. 3, 13, 14.

Pledge, of Government securities by agent for unauthorised loan—Suit for recovery of securities by principal from transferee—Negotiation, *U—X*, 10.

Power, Power-of-attorney—Explained, *G*, *H*, 4.

Different kinds, *I*, 5.

Certain expressions explained with respect to, *J—L*, 5.

of appointment, *M-1*, 6.

Delegation, *N*, 6.

to prosecute and defend suits, *C*, *D*, 7.

Principal and agent—Power to sue given to an agent, extent of—Vakil, reasonable remuneration to, under such power, *E*, 7.

to carry on business of firm, *F*, 8.

to sell, etc., *G—K*, 8.

by statute—Power by will—Requisite in India of delegation of agency—execution of deeds—Power-of-attorney by executrix, *P*, *Q*, 9.

to vakil to obtain copies from Collector's office—Stamp—Court-Fees Act, *S*. 11, Art. 10 (a)—Stamp Act, Sch. I, Art. (50) *b*, *I*, 19.

exempt under *S*. 19 (i) of the Court-Fees Act, 1870, *J*, 19.

Presentation by agent having no subsisting, *T*, 21.

Power of appointment, executed by general bequest, *K*, 30.

Effect of *S*. 78, Succession Act, *L*, 30.

A power to appoint amongst a class—Nature, *U*, 31.

A power excluding a person—Nature, *V*, *W*, 31.

A power requiring express reference in execution—Nature, *X—Z*, 31.

What is sufficient execution of a general power, *A—C*, 31.

up to a specified amount, *D*, 32.

Rule against perpetuity, applied to, *H—P*, 32, 33.

Power exercised within the limits of perpetuity is good, *H*, 32.

Character of appointee under a general power, *I*, 32.

Character of appointee under a special power, *J*, *K*, 32.

Gift in default of a power invalid for remoteness is valid, *L*, 32.

Power contingent on remote event invalid, *M*, 32.

Validity of appointment determined by state of things existing when appointment takes effect, *N*, 33.

under Hindu Law—Limitations, *O*, 33.

Validity of, *P*, 33.

Power-of-attorney, Power—Explained, *G*, *H*, 4.

Letter of attorney—Procurator, *M*, 5.

Execution—Evidence to show that principal is alive—Consideration, *P—U-1*, 6.

Construction of, *V—Z*, 6, 7, *X*, 22, *G*, 23.

Construction—Power to dispose of property, *A*, *B*, 7.

by executrix—Power by statute—Power by will—Requisite in India of delegation of agency—Execution of deeds, *P*, *Q*, 9.

Constitution of agency by power of attorney—Power to borrow money for particular purpose in particular manner—Binding nature of debt contracted in different manner, *T*, 10.

Agent, *Y*, 11.

Contract Act, IX of 1872, *S*. 25—*Mooktarnama*—Bond to secure barred debt whether binding *A*, 11.

Power-of-attorney—(Continued).

Principal and agent—*Mooktarnama*—Authority of agent, limitation of gift, *B*, 11.

to husband—*Pardanashin* lady, *C*, 11.

Consideration for, *D*, 12.

Government, suit by— to institute suit not necessary, *E*, 12.

Summary dismissal of an appeal—Appeal—Special, —Stamped paper for special, *F*, 12.

Execution under, *S*. 2, 12, 13.

Execution of document by attorney—, to several persons—Name of principal signed by one attorney—Document attested by the other attorneys, *L*, 13.

Payment by attorney under power, without notice of death, &c., good, *S*. 3, 13, 14.

Deposit of original instruments creating, *S*. 4, 14—18.

Presumption as to, *S*, 15.

Evidence Act, *S*. 85—Executor *dative qua* father—Application for letters of administration, *T*, *U*, 15, 16.

by executors, proof of, by means of declaration of attesting witnesses before notary public, *V*, 16.

Declaration as to execution of, before the Chief Magistrate, Glasgow—Certificate by notary public, 16.

Documents held admissible, *W*, *X*, 16.

Identification of executant, whether necessary, *Y*, *Z*, 16, 17.

signed by Deputy Collector for Deputy Commissioner, presumption as to, *id*, 17. of married women, *S*. 5, 18.

Court-Fees, Act, *I*, *J*, 19.

recognizable for purposes of *S*. 32, *K*, 19, 20.

Proof of, *L*, 20.

Stamp duty for executing, under *S*. 33 (*a*), *M*, 20.

by *purdanashin* lady, *O*—*Q*, 20.

What agents entitled to present documents for registration, *Q*—*S*, 21.

Registration under defective, validity of, *U*, 22.

Presentation under power not mentioned in Registration Act, *V*, 22.

to create a charge on immoveable property—Indian Registration Act (III of 1877), *Ss*. 17, 21, 49, *W*, 22.

to exercise rights and under Madras Rent Recovery Act—Power coupled with interest whether revocable—Acceptance by tenants of pattas tendered by shrotriendars with knowledge of grantees's right—Subsequent tender of pattas by grantee—Refusal thereof by tenants—Suit by grantee to enforce acceptance of pattas—Maintainability, *Y*, 22.

defined, *Z*, 23.

Instrument authorising a person to receive money on behalf of another, *A*, 23.

Sunnud to a gumastah—How, *C*, 23.

Deed in substance a, *D*, 23.

and not a declaration of trust, *H*, 23.

Single transaction, *F*, 23.

Stamp duty, *H*, 23, 24.

Authority to receive money, *I*, 24.

Authorising to recover judgment-debt, *J*, 24.

Authority to indorse bills, *K*, 24, 25.

Authority to receive income and distribute profits, *L*, 25.

Mukhtearnamas and vakalatnamas, *M*, 25.

Power-of-attorney—(Concluded).

- Authorising holder to appear and do all acts necessary for execution of decree, *N*, 25, 26.
- Authority to pay money, *O*, 26.
- and not an agreement, *P*, 26.
- and not a declaration of trust—Appointment as Manager and Agent of a plantation, *Q*, 26.
- Act VIII of 1871—Act XVIII of 1869, *R*, *S*, 26, 27.
- on behalf of absent applicants, *B*, 28.
- Power required from a native chief, *C*, 28.
- Authority to draw pension from month to month, *D*, 28.
- Presenting for registration and admitting execution, *T*, 27.
- for registration of document, *U*, 27.
- Authority to register a mortgage-deed and a lease, *V*, 27.
- Presentation for registration and delivery to the claimant—Cls. (a) and (b)
- Art. 48, Stamp Act, *W*, 27.
- Cls. (c) and (d), Art. 49, Stamp Act, *X*, 27.
- Court-fee stamp—General stamp, *Y*, 28.
- Power to take out execution and institute a suit, *Z*, 29.
- Production and admission of execution of six deeds, *F*, 29.
- Details of a single transaction—Several transactions, *G*, 29.
- by several persons, *H*, 29.
- S. 5, Act I of 1879 (Stamp)—, executed in England—Fiscal requirements, *I*, 29.
- Power of sale*, includes power to mortgage with right of sale, *L—N*, 8, 9.
- Executor cannot exercise a, by attorney, *O*, 9.
- Power to mortgage*, does not authorise a sale, *R*, 9.
- Power to sell*, or mortgage—Execution of simple money-bond, *S*, 9.
- Presumption*, as to powers of attorney, *S*, 15.
- Power-of-attorney signed by Deputy Collector for Deputy Commissioner, as to, *A*, 17.
- Principal and agent*, *Mooktearnama*—Power-of-attorney—Authority of agent—Limitation of gift, *B*, 11.

R

- Registration*, What agents entitled to present documents for, *Q—S*, 21.
- Presentation by agents having no subsisting power, *T*, 21.
- under defective Power-of-attorney, validity of, *U*, 22.
- Presenting for, and admitting execution, *T*, 27.
- Power-of-attorney for, of document, *U*, 27.
- Presentation for, and delivery to the claimant—Cls. (a) and (b), Art. 48, Stamp Act, *W*, 27.
- Registration Act*, 1877, Ss. 17, 21, 49—Attorney, power of, to create a charge on immoveable property, *W*, 22.
- Registration Act*, 1908, Power-of-attorney, 19—22.
- S. 32, Power-of-attorney, recognisable for purposes of *K*, 19, 20.
- Proof of Power-of-attorney, *L*, 20.
- S. 33 (a)—Stamp duty for executing Power-of-attorney under, *M*, 20.
- S. 33—Deed of sale by Buddhist wife whether requires registered power, *N*, 20.
- Power-of-attorney by *purdanashin* lady, *O—Q*, 20.
- What agents entitled to present documents for registration, *Q—S*, 21.
- Presentation by agent having no subsisting power, *T*, 21.
- Registration under defective Power-of-attorney, validity of, *U*, 21.
- Presentation under power not mentioned in, *V*, 22.

Rules, Instance of rules, etc., under this Act, *B*, 17.

Rule against perpetuity, Power exercised within the limits of perpetuity is good, *H*, 32.

Character of appointee under a general power, *I*, 32.

Character of appointee under a special power, *J*, *K*, 32.

Gift in default of a power invalid for remoteness is valid, *L*, 32.

Power contingent on remote event, invalid, *M*, 32.

Validity of appointment determined by state of things existing when appointment takes effect *N*, 33.

Power of appointment under Hindu Law—Limitations, *O*, 33.

Power of appointment, validity of, *P*, 33.

S

Sale, under power—Duty of purchaser, *I*, 8.

Stamp, duty for executing Power-of-attorney under S. 33 (a), *M*, 20.

Single transaction, *F*, 23.

Power-of-attorney—Construction, *G*, 23.

" *"*, *H*, 23, 24.

" *"*, authority to receive money, *I*, 24.

" *"*, authorising to recover judgment-debt, *J*, 24.

" *"*, authority to indorse bills, *K*, 24, 25.

Presenting for registration and admitting execution, *T*, 27.

Power-of-attorney for registration of document, *U*, 27.

Authority to register a mortgage-deed and a lease, *V*, 27.

General—Power-of-attorney—Court-fee stamp, *Y*, 28.

Authority to collect rents and to sue for them—Act X of 1862, *Z*, *A*, 28.

Power-of-attorney on behalf of absent applicants, *B*, 28.

Power required from a native chief, *C*, 28.

Authority to draw pension from month to month, *D*, 28.

Power to take out execution and institute a suit, *E*, 29.

Production and admission of execution of six deeds, *F*, 29.

Details of a single transaction—Several transactions, *G*, 29.

Power-of-attorney by several persons, *H*, 29.

Stamp Act, Sch. I, Art. 50 (b)—Power to vakil to obtain copies from Collector's office

 —Stamp—Court-Fees Act, S. 11, Art. 19 (a), *I*, 19.

Power-of-Attorney, defined, *Z*, 23.

Instrument authorizing a person to receive money on behalf of another, *A*, 23.

Sunnud to a gumastah, *C*, 23.

Deed in substance a Power-of-attorney, *D*, 23.

Power-of-attorney and not a declaration of trust, *E*, 23.

Appointment as manager and agent of a plantation, *Q*, 26.

Power-of-attorney—Act VIII of 1871—Act XVIII of 1869, *R*, *S*, 26, 27.

Authority to receive income and distribute profits, *L*, 25.

Mukhtearnamas and vakalatnamas, *M*, 25.

Authorising holder to appear and do all acts necessary for execution of decrees, *N*, 25, 26.

Authority to pay money, *O*, 25.

Power-of-attorney and not an agreement, *P*, 26.

Presentation for registration and delivery to the claimant—Cls. (a) and (b), Art. 48, Stamp Act, *W*, 27.

Cls. (c) and (d), Art. 48, *X*, 27.

Succession Act, 1865, Power of appointment executed by general bequest, *K*, 30.

S. 78, effect of, *L*, 30.

as to *onus* of proof, *M*, 30.

Application of, *N—T*, 30, 31.

Power contained in a settlement made by testator, *F*, 32.

Power exercised by will made prior to instrument creating it, *F*, *G*, 32.

Power exercised within the limits of perpetuity is good, *H*, 32.

Character of appointee under a general power, *I*, 32.

Character of appointee under a special power, *J*, *K*, 32.

Gift in default of a power invalid for remoteness is valid, *L*, 32.

Power contingent on remote event, invalid, *M*, 32.

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A power excluding a person—Nature, *V*, *W*, 31.

A power requiring express reference in execution—Nature, *X—Z*, 31.

What is sufficient execution of a general power, *A—C*, 31.

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Validity of appointment determined by state of things existing when appointment takes effect, *N*, 33.

Power of appointment under Hindu Law—Limitations, *O*, 33.

Power of appointment, validity of, *P*, 33.

V

Vakalatnamas, *Mukhtarnamas* and, *M*, 25.

THE CARRIERS ACT, 1865

(ACT III OF 1865)

(WITH THE CASE-LAW THEREON)

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THE CARRIERS ACT, 1865.

STATEMENTS OF OBJECTS AND REASONS.

The defective state of the Law of India in respect of the liabilities of Carriers, whether companies or individual has for some time past attracted the attention of the Governor-General in Council but it was thought desirable to postpone any enactment on the subject, until it should be seen whether the labours of Her Majesty's Commissioners for preparing a body of substantive law would relieve the Indian Legislature from the necessity of special legislation.

Meantime, however, the question has become pressing, from increase in the numbers of Carrying Companies, from the transfer of part of the Government carrying business to one of them, and from the prospect of Tramways being constructed under Act XXII of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or Companies and for regulating the construction and use of works on land so taken*). The necessity for prompt legislation has further been urged on the Government in petitions and by the Government of Madras in an official letter.

The Bill now published with the Viceroy's permission follows the principles though not the form or the language, of the English Statutes regulating the liability of carriers.

The earlier sections extend to India the principle embodied in the English Statute II, Geo. IV and I Will, Cap. 68. They relieve carriers from the extraordinary liabilities which would be imposed on them by the delivery to them, without notice, of articles of peculiar value or perishableness. Any customer, delivering to the carrier any of the articles enumerated in the Schedule must declare them, and then the Carrier may charge at a higher rate for the additional risk, in conformity with a scale to be publicly exhibited in his place of business. Under the ordinary Law of Contract, the carrier might relieve himself from liability by such a notice, but it would be necessary to bring the notice home to the customer by evidence. From the necessity of giving such evidence, the carrier will now be relieved by this enactment.

By S. VI it is provided that the Carrier shall not rid himself of his liability for articles neither usually valuable, nor unusually perishable, by any public notice, but (unless he be the owner of a Tramway) he is permitted to modify his legal obligations by special contract.

S. VII extends to Tramways constructed under Act XXII of 1863, the same rule which is applied to Railways by Act XVIII of 1854. It seems highly expedient that the same law should if possible be made to govern both Railways and Tramways.

The rule applicable to Indian Railway Companies is contained in S. XI of Act XVIII of 1854, and it is as follows :—

“The liability of such Railway Company for loss or injury to any articles or goods to be carried by them other than those specially provided for by this Act, shall not be deemed or construed to be limited, or in anywise affected by any public notice, given, or any private contract made by them; but such Railway Company shall be answerable for such loss or injury when it shall have been caused by gross negligence or misconduct on the part of their agents or servants.”

On this section the Government of Madras observes :—The first clause prohibiting any private contract in limitation of liability goes far beyond the common Law of England, and Statute 17 and 18, Vic. Cap. 81, S. VII, which admits of such contracts if just and reasonable. It is difficult to see why a Railway Company in India

should be deprived of that power of protecting itself by special contract which a Railway Company in England possesses. If the latter clause of the section which makes a Company liable for gross negligence or misconduct of their agents, is meant to relieve them from liability in all other cases, it would be well to say so by distinct negative words. But it is very questionable whether so wide an exemption from responsibility is desirable or was intended. If however, the word "only", be supplied after "answerable" in the last line but three of the extract from the Railway Act as printed above the section becomes intelligible. It limits the liability of Railway Companies to the consequences of gross negligence or misconduct on the part of their agents or servants, but declares that from this liability so limited they shall not be allowed to relieve themselves by any kind of contract. There cannot indeed be much doubt that the intention of the Legislature was to place all Railway Companies in what was once supposed to be the exact position of Carrier who had contracted for himself as favourably as the law of England would permit.

It was in fact, long supposed in England that while a Carrier could by contract relieve himself from most of his liabilities, his power of doing so stopped short of liability for negligence or misconduct. Such is the view of the law taken by Mr. Justice Story in his commentaries on the Law of Bailments, S. 549, and such is understood to be still the law in America. But a series of decisions in the English Courts overturned the older doctrine, and it was settled that a carrier could, by a properly framed contract, deliver himself from liability even for misconduct or negligence. The liberty thus conceded was, however, found to be a practical evil, and the English Legislature intervened by 17 and 18, Vic. Cap. 31.

The nearly contemporaneous enactment of the Indian Legislature, embodied in S. XI of Act XVIII of 1854, is obviously aimed at the same object.

It seems very undesirable to adopt the rule contained in S. VII of 17 and 18 Vic. Cap. 31, which permits Companies to contract themselves, on certain conditions, out of their liability for negligence. The section in question has been severally condemned by the present Lord Chancellor of England on the ground both of obscurity of expression and of difficulty of application:—(*Peek v. The North Staffordshire Railway Company*, 32 *Law Journal N.S.Q.B.* 241). On the other hand the rule of the Indian Legislature is comparatively simple, it would probably be sustained by the general sense of the mercantile community, and it is especially to a country in which there exists considerable differences of opinion as to the general liabilities of Carriers.

HENRY S. MAINE,

C. BOUBNOIS,

SIMLA,
11th June, 1864. }

Offg. Depy. Secy. to the Govt. of India,
Home Dept.

COMMON CARRIERS' BILL.

PROCEEDINGS RELATING TO THE BILL.

I. The Hon'ble Mr. Maine introduced the Bill relating to the rights and liabilities of common carriers, and moved that it be referred to a Select Committee, with instructions to report in four weeks. He said that, though this was a short Bill, he believed it would be of great value in the mofussil. To explain the measure he might remind the Council that the general law of most European countries, that is, the *prima facie* as unmodified by special agreement, imposed extraordinary liabilities on common carriers, being persons who made it their business to convey goods from place to place by land or by river. They were made absolutely, or nearly absolutely, responsible for the safe custody and safe delivery of the goods committed to them, and no excuse for the non-performance of their contract, was admissible. Whether this severe law obtain in India

was matter of uncertainty—an uncertainty which surrounded so many questions of Indian Mofussil law. The better opinion seemed to be that, even in India, obligations of unusual and exceptional stringency were imposed upon carriers. But it was unnecessary to discuss the point, as the Indian Law-Commissioners were understood to be addressing themselves to the chapter of the Civil Code on Contract, and will have to take up incidentally the liabilities of Carriers. Mr. Maine had hitherto been speaking of the primary and general law of the obligations incurred by carriers by the bare fact of their contracting to convey and deliver goods. Those obligations might, however, be modified indefinitely by special agreement. The practical result, therefore, was, as in so many cases of one-sided and inequitable law, exactly the reverse of that intended by the designers of the primary rule—always supposing it could be spoken of as deliberately intended, for it was in truth of such antiquity that it was almost idle to speak of it in connection with fixed design. It was found that common carriers habitually resorted to a number of expedients for delivering themselves from their extraordinary liabilities. Either they put up in their place of business a board or table, stating the conditions on which they would receive goods, and, if it could be shown that these conditions came to the notice of the customer, they were binding on him; or, perhaps, they placed in his hands a written or printed paper containing similar conditions, and the receipt of such a paper, followed by delivery to the carrier, would almost in every case constitute a special agreement. Practically, therefore, what the Legislature had to deal with was, not only the extraordinary severity of the general law to carriers, but also the extreme leniency and one-sidedness of the terms which carriers secured to themselves by special contract—terms which were often submitted to by the customer without his being aware of what he was doing. The Bill was intended to correct these mutual obligations. It was in accordance with English legislation on the subject, following the principle, though not the language, of the English Statutes. The English rules were understood to have generally commended themselves to the approbation of the mercantile classes. If the goods for conveyance consisted of any of the articles enumerated in the Schedule—that is, were unusually valuable or unusually perishable—such as gold jewels, paintings, engravings, or title-deeds—the customer, when committing them to the carrier, must give a special description of their character and value, otherwise the carrier would be relieved from liability. On the other hand, the carrier was allowed to charge an additional rate as insurance against the augmented risk, in conformity with a scale of charges to be publicly exposed in his place of business. If, however, the goods were of an ordinary kind, neither unusually valuable, nor unusually destructible, the Carrier would not be allowed to acquit himself of his obligations merely by putting up a table or board. His only mode of mitigating his general responsibility would be by special contract, which Mr. Maine was inclined to think—though that was not in the present Bill—ought to be a document signed by the customer or his agent.

The remainder of the Bill was framed to place Railways constructed under Act XXII of 1863, or tram-roads as they were sometimes called, on the same footing as regarded liability for the carriage of goods as Railways constructed under the general Indian Railway Act. In his statement of objects and reasons he had attempted to explain what was the real purport of the provisions of the Act on this subject. The argument was somewhat technical, and he would not repeat it now. The rule adopted was a simple one. Railway Companies were liable for the negligence or misconduct of themselves or their servants or agents, and, of course, for fraud; but were not otherwise answerable for loss. The explanation of that rule was as follows: a Railway Company, both in India and in England was so powerful a body; it had such a virtual monopoly of the carriage of goods along the line of country which it occupied that, if it were left to itself, it would probably contract itself out of all its liabilities. It would constrain its customers to accept such special terms that it would be liable under no circumstances and for nothing. The Indian Railway Act, accepted this advantage of Railway

Companies up to a certain point; but stopped there, and absolutely forbade Railway Companies to relieve themselves in any manner from liabilities incurred through negligence of positive misconduct. The rule was a simple one—much simpler than that adopted by the English Parliament, which, indeed, had fallen into several legislative miscarriages in its dealing with this subject. Mr. Maine was further informed by gentlemen conversant with the practical working of the law, that the rule in India was found convenient and easy of application. And, indeed, even if the inconvenience were greater, the Council would probably be of opinion that Railways formed under the new Act should not stand under different obligations from those which attached to Railways governed by the older Indian enactment. Mr. Maine had to add that he had received some valuable suggestions from a learned Judge of the High Court, Mr. Justice Levinge, who had had much experience of the working of the law of carriers during his practice at home. These suggestions, which referred chiefly to matters of detail, Mr. Maine would submit to the Select Committee.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill relating to the rights and liabilities of common carriers—The Hon'ble Messrs. Harington, Maine, Brown, Bullen and Cust.

The Council then adjourned.

CALCUTTA, }
The 2nd December, 1864. }

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

[See, Gazette of India, 1864, supplement, p. 497.]

II. The Hon'ble Mr. Maine also moved that the Report of the Select Committee on the Bill relating to the rights and liabilities of Common Carriers, be taken into consideration. He said that in this Bill, which he trusted would be a measure of some value to the mercantile and general community and which certainly seemed to be required by the extension of the business of private carrying, the Select Committee had suggested only two alterations of any importance. The first was in S. 6. When the Bill was last before the Council he had described the system of the Bill, which was that of the English law, as follows:—

If the goods for conveyance consisted of any of the articles enumerated in the Schedule, that is, were unusually valuable or unusually perishable such as gold, jewels, paintings, engravings or title-deeds, the customer, when committing them to the carrier must give a special description of their character and the value, otherwise the carrier would be relieved from liability. On the other hand the carrier was allowed to charge as additional rate as insurance against the augmented risk, in conformity with a scale of charges to be publicly exposed in his place of business. If, however, the goods were of an ordinary kind, neither unusually valuable nor unusually destructible, the carrier would not be allowed to acquit himself of his obligation merely by putting up a table or board.

Mr. Justice Levinge, however, had called the attention of the Select Committee to an evasion of the rule which was not uncommon in England and had suggested that the carrier might perhaps cause the coolie who brought the article for carriage to sign or put his mark to some paper and that would constitute a special contract. Mr. Justice Levinge, had, therefore, suggested and the Select Committee had accepted the suggestion, that, when a special contract limiting the liability of the carrier was signed, the agent signing should be always an agent expressly authorized to bind the customer.

The other amendment was in section 9 and was not absolutely required, but was adopted for the sake of clearness. It provided that, when a customer was suing a common carrier, the customer should only be bound to prove a contract or delivery and the non-delivery of the goods at their destination and then it would be for the carrier to

prove that the loss or damage took place under such circumstances as would relieve the carrier from responsibility.

The only other alterations were the insertion of a few words in the Preamble to exclude of Government from the operation of the Bill, and the addition of a section saying the provisions of Act No. XVIII of 1854 (relating to Railways in India).

He begged to move that the report of the Select Committee be taken into consideration.

The motion was put and agreed to.

The Hon'ble Raja Sahib Dyal Bahadur proposed the addition of the following words to the third section: "and the carrier or his agent shall thereupon himself personally have such property examined or if that be impossible shall have it inspected and the seal affixed to the box or parcel in which such property is contained, and shall on delivery thereof show such seal to be intact."

The custom now prevailing in the country was that jewels and similar valuable property were either shown to the insurer when delivered over to him and by him when he delivered them over in his turn, or that the seal was affixed to the box in which such valuables were contained was pointed out to him, and was by him shown to the party receiving delivery from him to be intact. For instance, shawls and such valuable cloths were either packed in the presence of the insurer, or, if given over to him already packed, were sealed, in which case, the Raja said, the seals remaining intact absolved the insurer from responsibility.

The Hon'ble Mr. Maine thought that the Hon'ble Member had overlooked the fact that the particular section referred to was one protecting the carrier, and enabling him to compensate himself for increased risk by an enhanced rate of charge. A fraudulent declaration of value under the section by the consignor would in no way bind the carrier.

The Hon'ble the Maharaja of Vizianagram moved as an amendment the words "cloths and tissues embroidered with the precious metals or of which such metals formed part and Articles of ivory ebony or sandalwood" should be added to the schedule.

The amendment was agreed to.

The Hon'ble Mr. Maine then moved that the Bill as amended be passed.

The Motion was put and agreed to.

[See Gazette of India, 1865, pp. 51, 64, 65.]

THE CARRIERS ACT, 1865.

[ACT III of 1865] ¹.

(Passed on the 14th February, 1865).

An Act ² relating to the rights and liabilities ³ of Common Carriers.

HISTORICAL MEMOIR.

N.B.—This Act is based on the principle embodied in the Carriers Act, 1830 (II Geo. IV and I, Wm. IV, c. 68). It is not in all respects similar to 11 Geo. IV and I, Wm. IV, c. 68, 15 C.W.N. 226; 32 M. 95 (124), 3 B. 109 (116).

Year.	Number of Act.	Name of Act.	How affected.
1865	III	The Carriers Act.	Rep. in part, Act IX of 1890. Repealed (as to carriers by rail), Act IV of 1879. Amended by Act X of 1899, S. 2.

WHEREAS it is expedient not only to enable common carriers to limit,
 their liability ⁴ for loss of or damage to property
 Preamble. delivered to them to be carried but also to declare
 their liability for loss of or damage to such property occasioned by the
 negligence or criminal acts of themselves, their servants or agents ⁵ ; It is
 enacted as follows :

(Notes).

1.—“Act III of 1865.”

(1) Statement of Objects and Reasons.

For—of the Bill which was passed into law as Act 3 of 1865, *See* Gazette of India Extraordinary, dated 1st August, 1864. A

(i) NECESSITY FOR THE PRESENT LEGISLATION.

The defective state of the Law of India in respect of the liabilities of Carriers, whether Companies or individual has for some time past attracted the attention of the Governor-General in Council but it was thought desirable to postpone any enactment on the subject, until it should be seen whether the labours of Her Majesty's Commissioners for preparing a Body of Substantive law would relieve the Indian Legislature from the necessity of special legislation. Meantime, however, the question has become pressing, from increase in the numbers of Carrying Companies, from the transfer of part of the Government carrying business to one of them, and from the prospect of Tramways being constructed under Act XXII of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or Companies and for regulating the construction and use of works on land so taken.*) The necessity for prompt legislation has further been urged on the Government in petitions and by the Government of Madras in an official letter.

[See Statement of Objects and Reasons to this Act.]

(ii) BILL FOLLOWS ENGLISH STATUTES.

The Bill now published by the Viceroy's permission follows the principles, though not the form or the language, of the English Statutes regulating the liability of carriers. (See Statement of objects and Reasons to this Act). 3 B. 109 (116) ; 15 C.W.N. 226 ; 32 M. 94. B

(2) Proceedings relating to the Bill.

For—, *See* Gazette of India, 1864, Supplement, p. 497, Gazette of India, 1865, pp. 51, 64 and 65. C

(3) Places where Act has been declared to be in force.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874) S. 3. D

It has been applied to Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898) ; but its application to hill tribes in a hill tract is barred by the Kachin Hill Tribes Regulations, 1895 (I of 1895) and to China in the Chin Hills by the Chin Hills Regulation, 1896 (V of 1896). It has been applied to the Santhal Parganas, by the Santhal Parganas Settlement Regulation, 1872 (III of 1872), S. 31 as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899) : and to the Arakan Hill District (with a modification) by the Arakan Hill District Regulation, 1874 (IX of 1874), S. 3. E

1.—“ Act III of 1865 ”—(Concluded).

It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), Genl. Acts, Vol. II, to be in force in the following Scheduled District namely:—

Sindh.	...	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpaiguri, the Western Hills of Darjiling, the Darjiling Tarai and the Damson sub-division of the Darjiling District	...	Do. 1881, Pt. I, p. 74.
The Districts of Hazaribagh Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum	...	Do. 1881, Pt. I, p. 504.
The Porahat Estate in the District of Singhbhum	...	Do. 1897, Pt. I, p. 1059.
Kumaon and Garhwal	...	Do. 1876, Pt. I, p. 605.
The scheduled portion of the Mirzapur District	...	Do. 1878, Pt. I, p. 383.
Jaunsar Baiwar	...	Do. 1878, Pt. I, p. 382.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ghazi Khan (portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat now form the North-west Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and <i>ibid</i> , 1902, Pt. I, p. 575 : but its application to that part of the Hazara district known as Upper Tanawal is barred by the Hazara (Upper Tanawal) Regulation, 1900 (II of 1900) (Punj. and N. W. Code)	...	Do. 1886, Pt. I, p. 48.
The Scheduled Districts of the Central Provinces	...	Do. 1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam	...	Do. 1898, Pt. I, p. 870.
The District of Sylhet	...	Do. 1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills)	...	Do. 1879, Pt. I, p. 299.

It has been declared, by notification under S. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul—See Gazette of India, 1886, Pt. I, p. 301.

It has been extended by notification under S. 5 of the same Act, to the following Scheduled Districts, namely:—

The Tarai of the Province of Agra	...	See Gazette of India, 1876, Pt. I, p. 505.
Ajmere and Merwara	...	Do. 1877, Pt. I, p. 605. F

(4) Legislative changes.

This Act has been repealed as to carriers by rail by the Indian Railways Act, 1879 (IV of 1879). For the Indian Railways Act now in force, see Act IX of 1890.

2.—“Act.”

(1) Act preserved in tact.

—by Act IX of 1872. See 3 B. 109 ; 18 C. 620.

(2) Law applicable to common carriers—Contract Act (IX of 1872).

The Act of 1872 was not intended to deal with the law relating to common carriers, and notwithstanding the generality of some expressions in the chapter on bailments, the common carriers are not within the Act. 18 C. 620 (P.C.) = 18 I.A. 121.

(3) S. 152, Contract Act (IX of 1872)—Common carriers—Contract Act not applicable—Reasons.

(1) The obligation imposed by law on common carriers has nothing to do with contract in its origin. It is a duty cast upon common carriers by reason of their exercising a public employment for reward.

(2) The Act of 1872 does not profess to be a complete Code dealing with the law relating to contracts. It only purports to define and amend certain parts of that law.

(3) The only section in the Act in which bailment, for the purpose of carriage, is mentioned is S. 158, which however, deals only with gratuitous bailments.

(4) At the time of the passing of the Act of 1872, there was in force a statute relating to common carriers, which, in connection with the common law of England, formed a complete Code. Had it been intended to codify the law of common carriers by the Act of 1872, the more usual course would have been to have repealed the Act of 1865 and to re-enact its provisions, with necessary modifications.

(5) As the Act of 1865 is not “expressly repealed” by the Act of 1872, nothing in the Act of 1872 is to “affect” its provisions. *The Irrawaddy Flotilla Company v. Bugwan Das*, 18 C. 620 (P.C.) = 18 I.A. 121.

(4) Scope of the Act.

As to—, see 3 M. 107.

3.—“Rights and liabilities.”

(1) Bailee and common carrier—Distinction—Liability.

In the hiring of service of things, the bailee is bound only to the exercise of ordinary diligence, and is in the same position as an ordinary bailee for hire for the custody of things. But the liability of a professional or common carrier is much greater. Story on Bailments, 457—9.

By the English Common Law he is liable for losses, except those by the act of God, or public enemies and excepting also those arising from the inherent defects or tendencies of the thing. This liability was founded on public policy, to prevent collusion with robbers, &c., and at present it is greatly controlled by express enactment. Id. 489, 93, 507, 507a.

By the Roman and some other laws the liability was never quite so great. Id. 459, 488.

The rights and liabilities of inland common carriers in India are now regulated by Act III of 1865 ; but only partially so, as their ordinary liability is not defined or affected in all cases, for instance in respect to articles not enumerated in the Act, and as to which no special contract has been made with the sender ; and hence in the absence of express law, the rules of the English common law would probably be followed in India. See Collet on Torts.

3.—“Rights and liabilities”—(Continued).

(2) Common carriers—Liability—Two-fold risk of carriers.

The rights and liabilities of common carriers and those for whom they carry, apart from special contract, are outside the Indian Contract Act, and are governed by the principles of the English Common Law as modified by the Carriers Act of 1865. 15 C.W.N. 226=9 Ind. Cas. 364.

The above doctrine is not limited to bills of lading. *Wyld v. Pickford*, 8 M. & W. 443; *D'Arc v. L. & W. Ry. Co.*, L.R. 9 C.P. 325; 30 L.T. 763; 22 W. R. 919 and *Martin v. G.I.P. Ry. Co.*, L.R. 3 Ex. 9; 37 L.J. Ex. 27; 17 L.T. 349, *relied upon*. *Czech v. G.S.N. Co.*, L.R. 3 C.P. 14; 37 L.J.C.P. 3; 17 L.T. 246; 16 W.R. 130, *R. Baxters Leather Co. v. Royal Mail Steam Packet Co.*, (1908) 2 K.B. 626; 99 L.T. 286; 24 T.L.R. 537; 77 L.J.K.B. 988, *Expl*; *Crouch v. L. & N.W. Ry. Co.*, 23 L.J.C.P. 75 at p. 82; 14 C.P. 255; 7 R.C. 717; 2 C.L.R. 188; 18 Jūr. 148; 2 W.R. 166, *Rel*.

A common carrier, therefore in India is subject to two distinct classes of liability; the one for losses for which he is liable as an insurer, the other for losses for which he is liable under his obligation to carry safely. 9 Ind. Cas. 364 (370).

Speaking generally the first of these are insurable risks from which the element of default is absent, the second are risks of conveyance in which that element is present. (*Ibid.*)

That Carriers Act of 1865 has in some degree modified this position. (*Ibid.*)

This Act follows the scheme but not the details or the language of the English Carriers Act, II Ge. IV and I Will. IV C. 69. *Ibid.*, 8 B. 109; 32 M. 95 (124).

The earlier sections limit the liability of carriers in respect of the perishable or valuable goods specified in the schedule to the Act. (*Ibid.*)

The effect of Ss. 6, 8, 9 is that the liability of a common carrier for the loss of goods not being of the description contained in the schedule may be limited by special contract signed by the owner save where such loss shall have arisen from the negligence or a criminal act of the carrier, of any of his agents or servants. (*Ibid.*)

The risks of a common carrier are two-fold, insurance risks and carrying risks. *Ibid.*, 371.

It has been the policy of the English Courts in dealing with exemption clauses to recognise this distinction and to construe them as not extending to carrying risks in the absence of clear words to that effect. In India, where there is a statutory prohibition against exempting a carrier from loss arising from negligence or criminal acts, there is perhaps an even stronger reason for adopting this canon of construction, at any rate within the limits implied by this prohibition. *The English cases on this point are collected in Price v. Union Lighterage Co.* (1903) 1 K.B. 750; and on appeal (1904) L.R. 1 K.B. 412; 73 L.J.K.B. 222; 89 L.T. 731; 52 W.R. 325; 9 C.C. 120; 20 T.L.R. 177; 3 S.E.C. (N. S.) 12 and (1907) L.R. 1 K.B. 769; 96 L.T. 402; 10 Asp. M.C. 330; 12 Com. Case. 210; 23 T.L.R. 302.

Maule, J., said “A common carrier who makes no stipulation is liable as an insurer but a common carrier who by notice limits his liability and

3.—“*Rights and liabilities*”—(Continued).

says “I will not contract as an insurer or I will only contract to such and such an extent or to the extent of such a value” still remains in all other respects a common carrier because although the incident of not being an insurer does not apply to him that is simply because it is not provided for. *Crouch v. L.N.W. Ry.*, (1854) 23 L.J.C.P. 75 at p. 82; 14 C.B. 255; 7 R.C. 717; 2 C.L.R. 188; 18 Jur. 148; 2 W.R. 166. M

(3) **Liability of common carriers.**

- (a) The—in India is discussed historically. See 6 P.R. 1897.
- (b) A common carrier is liable for losses by the wrongful acts of strangers, as well as those of his own servants, or arising from his own negligence. (See Story on Bailments, 507).
- (c) (i) The only exceptions are losses by the act of God, that is, from natural accident which would not happen by the intervention of man. (See Story on Bailments, 511).
- (ii) The Act of God which would excuse the carrier must be immediate and not remote. *Smith v. Shepperd*, referred to in Abbot on Shipping, 11th Ed., pp. 338—339.
- (iii) And by public enemies that is, those with whom the nation is at war and not mere robbers. (*Ibid.*)
- (d) But a carrier may limit his liability by means of special contracts or conditions. See *Wyld v. Pickford*, 8 M. and W. 443.
- (e) If those are shown to have been brought to the knowledge of the consignor, and he does not dissent, he is by English law assumed to assent to them. (*Ibid.*)
- (f) And this may be by a notice on ticket delivered to the consignor, or by exception contained in a bill of lading. (*Ibid.*)
- (g) But inland carriers in India cannot limit their ordinary liability as to articles not enumerated in the Act by mere public notice. (See Act III of 1865, S. 6). N

(4) **Common carriers, duties and responsibilities of—English law.**

- (a) A carrier of goods was bound by the English law to receive all good, brought to him for carriage, provided he had convenience to carry them. and the employer was ready to pay any reasonable award for the conveyance. See *Pickford v. The Grand Junction Ry. Co.*, 8 M. & W. 373; *Johnson v. The Midland Ry. Co.*, 4 Ex. 367; cited in 10 C. 166 (182).

A common carrier was also bound to carry the goods within a reasonable time, and to insure their safety during the carriage, and until delivery to the consignee, the act of God and the Queen's enemies only excepted. And it is important to note, that this duty was imposed upon him irrespective of any contract. It was imposed upon him by the custom of the realm, for the benefit of the public, by reason of the important trust which he undertook. (See the Observations of Lord Holt in *Coggs v. Bernard* (4) 1 Smith's L.C. 189, 6th Ed.; 199, 8th Ed.; 10 Cal. 166 (182).

§ 3.—“*Rights and liabilities*”—(Continued).

Common carriers are largely intrusted with the property of the public. They are intrusted with it under circumstances which make a breach of the trust a very easy matter, and the detection of the breach by the owner of the goods often extremely difficult. They are paid a fair compensation for the carriage proportionate to the risks which they run, and the liability which they incur. 10 Cal. 166 (182).

The policy of the law therefore is no more than just, which makes common carriers under ordinary circumstances insurers of the goods they carry. 10 Cal. 166 (183).

(b) A tender of the hire is not needed. *Pickford v. Grand Ry. Co.*, 8 M. & W. 572.

(c) A common carrier may not raise the rates to different persons, or that he has no room. (*Ibid.*)

(d) But the carrier may object that the goods are not such as he carries, or that he has no room. (*Ibid.*)

(e) The direction of the owner must be obeyed. See Story on Bailments, 590.

(f) When required, there must be re-delivery to the consignor. (*Ibid.*)

(g) The carrier is bound to use exact diligence safely and securely to carry the goods to their place of destination and there deliver them in a reasonable time and in a reasonable manner. (*Ibid.*) O

(5) **Obligation to carry.**

The—is limited to such goods, and to and from such places as the Carrier may have publicly professed to do, and has convenience for that purpose. *Johnson v. Mid Ry. Co.*, 4 Ex. 67. P

(6) **Delivery to carrier.**

(a) —must be made according to the known course of its business. See *Sim v. G. N. Ry. Co.*, 14 C. B. 647.

(b) Delivery must be made with the knowledge of the carrier, its agents or servants. *Lovett v. Hobbs*, 2 Show. 127.

(c) Delivery should be made at a reasonable time. *Garton v. B. & E. Ry. Co.*, 1 B. and S. 112. Q

(7) **Delivery of article.**

(a) Where an article is delivered to a carrier, that article and everything in or upon it is delivered to him. *Walker v. Jackson*, 10 M. and W. 161.

(b) It is the duty of the carrier to enquire what the article contains. (*Ibid.*) R

(8) **Liability of carrier attaches, when.**

The liability of carrier attaches from the time when the carrier accepts the goods for carriage. See *Dale v. Hall*, 1 Wills. 281. S

(9) **Liability begins when.**

(a) The liability begins on delivery to, and acceptance by the carrier; the delivery may be constructive as well as actual. See Story on Bailments, 574.

(b) Where the owner or his agent accompanies the goods and has exclusive custody of them, the carrier is not liable. *East India Co. v. Pullar*, 1 Stra. 99. T

3.—“Rights and liabilities ”—(Continued).

(10) Liability ends, when.

- (a) The liability ends when the goods have arrived at their place of destination and are deposited there, and no further duty remains on the carrier. See *Shepherd v. B. & E. Ry. Co.*, L. R. 39 Ex. 189.
- (b) The carrier will not be liable to the consignor if, by the order of the consignee, the delivery is at a place different from that agreed upon with the consignor. *Bartlett v. L. & N. W. Ry. Co.*, 8 Jur. N. S. 58.
- (c) The carrier's liability as carrier ceases when the contract for carriage has been performed. See *Brown on Railway Companies*, p. 299.
- (d) If the goods are to be delivered at the consignee's address, and they are refused at that address, the liability as carrier ceases. *Hengh v. L. & W. Ry. Co.*, L. R. 5 Ex. 51. U

(11) Liability under a contract to carry.

- (a) Where a company receives goods to be carried to a station beyond its own line, the contract is with that company only, and that company only can be sued by the owner of the goods if they are destroyed on the line of a second company. *Muschamp v. Lancaster and Preston Ry.*, 8 M. and W. 421.
- (b) In such cases, a servant of another company over which the goods are sent is to be considered the servant of the contracting company for the purposes of taking instructions for the countermand of the delivery of parcels. The contracting company is therefore liable if a servant of a second company disobeys an order given to him by the owner of the goods. *Scollern v. S. Staff Ry. Co.*, 8 A. X. 121. Y

(12) Proper address to be given.

Goods, etc., must be properly addressed. See *Cal. Ry. Co. v. Hunter*, 20 Sess. Cas. (2nd. Series) 1097; cited in *Macnamara on Carriers*, p. 136. W

(13) Route to be taken by the carrier.

- (a) The carrier undertakes to carry by the route ordinarily adopted in the usual course of business, though that route may not be the shortest. *Hales v. L & N. W. Ry. Co.*, 4 B. and S. 66.
- (b) It is not necessary that a carrier should arrange to carry the goods by the shortest route. *Myer v. L & S. W. Ry. Co.*, L. R. 5 C. P. 1. X

(14) Carrier not entitled to know contents.

A carrier cannot refuse to carry a parcel on the ground that he is not informed of its contents. *Crouch v. L. & N. W. Ry. Co.*, 14 C. B. 255. Y

(15) Defect inherent—Liability.

- (a) For any loss occurring through the inherent vice or defect of goods, a carrier will not be taken to task. *Hudson v. Baxendale*, 2 H. and N. 575. Z
- (b) Loss from the inherent vice of the thing carried would include deterioration of perishable articles, and also evaporation and leakage of liquids. (*Ibid.*) A

(16) Fragile goods.

- (a) “Some goods require much more tender handling than others, and the line of conduct which the carrier should propose to himself is that which a prudent owner would adopt if he were in the carrier's place, and had

3.—“ Rights and liabilities ”—(Continued).

to deal with the goods or animals under the circumstances and subject to the conditions in which the carrier is placed, and under which he is called on to act. *Gill v. M. S. and L. Ry. Co.*, L. R. 8 Q. B. 186 (196). **B**

(b) If the consignor wants that some special care should be taken in carrying the animals or goods consigned, the carrier should be informed of the same. *Baldwin v. L. C. and S. Ry. Cos.*, L. R. 9 Q. B. D. 582 (584). **C**

(17) Carriers—Misdescription—Loss of goods.

Misdescription of the nature of goods entrusted to a common carrier disentitles the sender to recover for their loss although the goods would not be subject to any extra rate had they been properly described. *Cor.* 133 = *Cor.* 24. **D**

(18) Non-liability as carriers.

Where goods have been lost after they had been marked by the carriers, but before they had been weighed or loaded, there was no complete contract for the carriage of the goods, but mere negotiation for the same, and so no liability arises from it. 1 S.L.R. 77. **E**

(19) Consignee's claim—Carrier's liability.

Where the consignees refused to take delivery of two bundles of cow-hides carried by the carrier on the ground of shortness in the number of pieces, and there was no evidence that the bundles had been broken or the hides counted by pieces, the carrier was declared not to be liable. 21 W.R. 380. **F**

(20) Consignee's delay in taking delivery.

Where a large quantity of goods of the same description are delivered to a carrier, his responsibility as such will continue, until the whole are ready for delivery, and, during the delay in the removal of the goods, he is liable as a warehouseman. 92 P.R. 1883. **G**

(21) Consignment under receipt note not signed by consignor.

The fact that the consignor had not signed the receipt for the goods was held immaterial, because he had actually delivered the goods under the terms of such note and could not claim exemption from off the terms. 99 P.R. 1895. **H**

(22) Carriers—Delivery of goods to carrier at consignor's risk—Delivery to consignee.

So long as goods, though delivered to a common carrier appointed by the consignee, remain at the risk of the consignor they are not delivered to the consignee. 1 M.H.C.R. 200. **I**

(23) Liability for damage to goods—Negligence.

A steam navigation company was employed by plaintiff to carry cargo from Calcutta to Rangoon and to deliver it into the receiving ship, or to land it at the consignee's expense, their liability ceasing as soon as the goods were free from the ship's tackle. When the ship arrived at port, the consignee not having had his own boats alongside, the goods were put into other boats, one of which through the negligence of the boatmen, was swamped and the contents damaged. Plaintiff sued for damages. *Held* that, as defendants were not shown to have

3.—“Rights and liabilities”—(Continued).

neglected the duty of taking reasonable and proper care in the selection of boats, they were not liable for the loss incurred. 24 W.R. 74. J

(24) Duty in case of absence, etc., of consignee.

- (a) If the consignee is dead, cannot be found or refuse to receive the goods the duty of the carrier is to secure the goods for the owner, and generally to do what is reasonable under the circumstances of the case. See Story on Bailments, pp. 542, 544. K
- (b) There is no general rule of law requiring a carrier to give notice to the consignor, but in some cases it may be reasonable, and therefore necessary that the carrier should do so. (*Ibid.*) L

(25) Refusal of the consignee to take delivery of the goods.

- (a) On the ———, the carrier is not bound to inform the consignor of the same. *Hudson v. Barendale*, 2 H. and N. 575. M
- (b) Though in certain cases it may be reasonable to inform the consignor of the fact of such refusal. (*Ibid.*) N

(26) Consignee's refusal to pay carrier's charges—Detention of parcel,

- (a) *Semle*—where a parcel is detained because the consignee refuses to pay the carrier's charges the parcel should be kept for a reasonable time at the place of delivery. *Crouch v. G.W. Ry. Co.*, 27 L. J. Ex. 315. O
- (b) A carrier is entitled to his freight and charges, and he is entitled to retain the goods in satisfaction of his lien upon them. 2 Agra 132. P

(27) Time of delivery.

- (a) Carriers, after a refusal of the goods at the consignee's address are involuntary bailees, and are only bound to act with reasonable care and caution with respect to the goods. *Hengh v. L. and N.W. Ry. Co.*, L.R. 5 Ex. 51. Q
- (b) Although a carrier may not be bound to deliver goods on any specific day or within any specific time, he is bound to deliver them within reasonable time, and what constitutes reasonable time must be determined upon the consideration of all the circumstances of the case. 2 Agra 132. R
- (c) Where there is no special contract as to the time of delivery, it must be within a reasonable time; but if the carrier has used ordinary diligence to prevent delay, there is no liability on the carrier's part for delay from accidents or causes beyond the control of such carrier. *Taylor v. G.N. Ry. Co.*, L.R.K. p. 385. S
- (d) He is not liable for delay caused by circumstances beyond his control. (*Ibid.*) T

(28) Amount of time allowed to the consignee to unload and remove his goods.

The——, and take delivery of the same depends on the circumstances of each case. *Coxon v. N.E. Ry. Co.*, (No. 2) 4 Ry. and Ca. Tr. Cas. 284. U

(29) Place for delivery.

- (a) It is part of the duty of the carrier to provide a proper place for delivery. *Rooth v. N.E. Ry. Co.*, L.R. 2 Ex. 173. V

3.—“Rights and liabilities”—(Continued).

(b) And the carrier is liable to a loss arising from neglect to provide a proper place. (*Ibid.*) W

(30) **Misdelivery.**

(a) A carrier is liable for—See Browne on Railway Company, p. 298. X

(b) But a carrier is not liable if he acts in the usual course of business and in accordance with his instructions. (*Ibid.*) Y

(31) **When non-delivery is excused.**

(a) The carrier is excused where there has been loss by the act of God, by public enemies, or by reason of inherent defects, or where from the nature of the goods they are liable to peculiar risks, and the carrier has taken all proper precautions against them, or where the right or stoppage in transit is duly exercised. See Story on Bailments, 574—6. Z

(b) Where carrier by mistake advises the consignee that certain goods have arrived when they have not in fact arrived, the carrier is not estopped from explaining the mistake, and cannot be made liable for the non-delivery of the goods. *Carr v. L. and N. W. Ry. Co.*, L.R. 10 C.P. 307. A

(32) **Action for non-delivery of goods.**

Action for non-delivery (owing to a carrier's negligence) is founded on contract and not on tort. *Fleming v. M.S. and L. Ry. Co.*, L.R.Q.B.D. 81. B

(33) **Carrier contracts with owner of goods.**

In the absence of special circumstances, the carrier's contract is with the person in whom the property in the goods is vested. See Browne on Railway Company, p. 296. C

(34) **Who must sue under the contract to carry.**

(a) Thus, where goods are delivered to a carrier for a purchaser under a valid contract for sale the consignee is the proper person to sue whether he has nominated him or not. *Dutton v. Solomonson*, 3 B. and P. 582. D

(b) This general rule may be varied by a special contract by the carrier that he will be liable to the consignor. *Davis v. James*, 5 Burr. 2680. E

(c) If there is no valid contract between the consignor and consignee, the consignor is the person to sue, and the consignee cannot sue, though he may have appointed the carrier. *Ccmbs v. Bristol and Exeter Ry. Co.*, 3 H. and N. 510. F

(35) **Goods sent on approval.**

Where the goods are sent on approval, the consignor is the person to sue. *Swain v. Shepherd*, 1 H. and Rob. 223. G

(36) **Contract—Want of privity—Carrier—Two companies—Loss—Remedy.**

Plaintiff delivered jute to the I.G.S.N. Company at Serajgunge for the delivery at the E.B. Ry. Co.'s station at Sealdah, where freight was payable on delivery and was so paid. A portion of the jute was not delivered, and a suit to receive its value was brought against the E.B. Ry. Co. *Held*, that the suit could not be dismissed on the ground of want of privity without further investigation. 17 W.R. 240. H

Act III of 1865 (THE CARRIERS ACT).

3.—“Rights and liabilities”—(Concluded).

(37) **Ss. 3, 8, 9, Act III of 1865—Contract to carry partly by steamer and partly by rail—Omissions of consignor to declare value and description of goods.**

(a) Where through-booking by steamer and then by rail or *vice versa* if made for the convenience of the public, and when the journey is performed partly in steamers of one Company and partly in trains of another, and the charges creditable to each are subsequently adjusted, the contract is divisible so far as the two portions of the journey are concerned. 34 C. 419=11 C.W.N. 1071 (11 C.W.N. 1076, F.). I

(b) Where a consignor failed to declare the value and description of the goods as required under the provisions of the Carriers Act and the Railways Act, and sued the Steamer Company for damages for loss of the goods so carried partly by steamer and partly by rail, held that, so far as the journey was by river, the steamer was entitled to claim, as regards the acts of its agents and servants, the protection afforded by the provisions of the Carriers Act, and so far as the journey was by rail, the Railway Company was similarly entitled to claim the protection afforded by the Railway Act. (*Ibid.*) *Le Conteur v. The London and S. M. Ry. Co.*, 1 Q.B.D. 54; *Baxaidal v. The Great Eastern Ry. Co.*, 38 L.J.Q.B. 137, R. J

4.—“Whereas...liability.”

(1) **Carrier no insurer against all risks.**

The preamble, betrays no intention on the part of the Legislature to fix on the common carrier the character of an insurer against all risks, except the act of God or the Queen's enemies. 3 Bom. 109 (116). K

(2) **Nature of the obligation of common carriers to carry goods with safety.**

(a) “To give due security to property, the law has added to that responsibility of a carrier which immediately arises out of his contract to carry for a reward, namely, that of taking all reasonable care of it, the responsibility of an insurer. From his liability as an insurer the carrier is only relieved by two things, *viz.*, the act of God and the King's enemies.” *Per Best, C.J.*, in *Riley v. Horne*, 5 Bingh. 217, cited in 19 B. 165 (181). L

(b) “He (the common carrier) is considered as having contracted to insure the safe delivery of, that is to say, as having contracted to carry and deliver safely and securely (the act of God and of the Queen's enemies alone excepted) the goods of which he as common carrier is bailee.” *Bergheim v. The Great Eastern Ry. Co.*, 3 C.P.D. 22; cited in 19 B. 165 (182). M

(c) “The reason why the law implied that this is his contract was that the carrier had, by himself or his servants during the bailment at times and in places where he could not even be supervised, the exclusive control and care of the goods entrusted to him by the owner, and, consequently to prevent fraud, the law imposed on those who contracted to carry goods as common carriers the obligation also to undertake to insure their safety.” (*Ibid.*) N

(d) “The law and liabilities of common carriers are founded on custom irrespective of contract. A common carrier is and always has been liable to be sued for any breach of this common law duty in an action for tort.” *Per Garth, C.J.*, in 10 C. 166 (186); 19 B. 165 (183). O

4.—“Whereas....liability”—(Concluded).

(e) “It is true that, when the employment of a common carrier has commenced, the law implies a contract on his part to perform the duty imposed upon him; and consequently he is liable to be sued, in an action either of tort or contract, according to the convenience or advantage of the plaintiff in each suit. (*Ibid.*) See Bullen and Lake on Pleadings, pp. 101 & 243. 19 B. 165 (183). P

(f) In the well-known treatise by the late Mr. Selwyn on the “Law of Nisi Prius,” first published in the years 1806, 1807 and 1808, (I cite from the 13th edition, 1869), under the title “Carriers,” it is stated that “Formerly the declaration in actions against common carriers stated their employment as common carriers, their liability by the custom of the realm, and delivery to and acceptance by the defendants of the goods to be carried, for a reasonable hire or reward, concluding with the loss or damage to the goods, but it afterwards became usual to declare in *assumpsit*, and not to state either the employment of the defendants as common carriers, or the custom of the realm as to their liability. This form of declaration has prevailed since the decision of *Dale v. Hall*, Michaelmas Term, 1750, in which it was settled, that it did not make any difference whether the plaintiff declared on the custom, or more generally in *assumpsit*; for by stating that the defendant carried for hire it would appear that the defendant was a common carrier, and then the law would raise the promise from the nature of the contract”—Selwyn’s Nisi Prius (13th Ed.), Vol. I, pp. 362, 363. 19 Bom. 165 (183 and 184). Q

(g) “I take it the law is very clear to this extent, that where a carrier receives goods to carry to their destination with a liability as carrier (except so far as that duty is qualified by exception), he may be said to be an insurer. The goods are then to be carried at the risk of the carrier to the end of the journey, and when they arrive at the station to which they were forwarded, the carrier has then complied with his duty when he has given notice to the consignee of their arrival. And after this notice if the consignee does not fetch the goods away, and becomes *in mora*, then I think the carrier ceases to incur any liability as carrier, but is subject only to the ordinary liability of bailee. There are several cases in which the question has been very much discussed as to when a carrier’s liability ceases as an insurer and his liability is changed into that of warehouseman.....But I do not think there has been any case decided to this extent that because the owner of goods was idle and blameable for leaving them in the carrier’s hands, therefore he as bailee held them under no responsibility whatever..... I think that the words of that note mean to point out that they (the company) would hold them as warehousemen and therefore they would be bound to take care of them; and at the owner’s risk so far as this, that they did not hold as carriers with a liability as absolute insurers (pages 260 and 262).” *Per Blackburn, J.*, 30 M. 79 (82, 83.) R

(3) Duties and liabilities regulated by principles of English law.

That the duties and liabilities of a common carrier are governed in India by the principle of the English Common law on that subject however introduced, has been recognised in the Carriers’ Act, III of 1865. 18 C. 620 (P.C.). S

5.—“For loss or damage....agents.”

See cases noted under Ss. 3, 8, *infra*.

Short title.	1. This Act may be cited as the Carriers Act, 1865.
Interpretation-clause:	2. In this Act, unless there be something repugnant in the subject or context— ‘common carrier’ ¹ denotes a person, other than the Government, ² “Common carrier.” engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately.
Person.	“person” ³ includes any association or body of persons, whether incorporated or not.
Number.	Words in the singular number include the plural, and words in the plural include the singular.

(Notes).

1.—“Common carrier.”

(1) Carrier.

— is a person who undertakes to transport the goods of other persons from one place to another for hire. It is not, however, every person who undertakes to carry goods for hire that is deemed a common carrier. All persons carrying goods for hire, as proprietors of wagons, masters and owners of ships, lightermen stage-coachmen, and the like come under the denomination of common carrier. A person who carries passengers only is not a common carrier. To bring a person within the description of a common carrier, he must exercise it as a public employment; he must undertake to carry goods for persons generally; and he must hold himself out as ready to transport goods for hire, as a business, not as a casual occupation, *pro hac vice*. The two obligations of a common carrier are (1) to carry for everybody, and (2) to answer for all things carried as insurers. The law casts upon the common carrier a duty to carry, which no one else is bound to do except upon agreement. The liability of carriers is limited by statute, provided they have put up notices as required by statute, and such notices have come to the knowledge of their customer. Railway and canal companies are common carriers, but their contracts of carriage are required by statute to contain no conditions but what are reasonable. Excepting as otherwise expressed in the special contract, or as protected by statute, a carrier is liable as an insurer of the goods carried, *i.e.*, for their absolute safe delivery. [See Law Dictionary by Bouvier, Broom, Browne, Mozley and Whitley and Tomlins.] T

(2) Who is a common carrier.

- (a) To make one a common carrier, the employment of such carrier must be habitual. See Story on Bailments, 495, 500. U
- (b) It must be a public business, so that the carrier would be liable for a refusal to carry. (*Ibid.*) Y
- (c) One undertaking jobs for special bargains, and not professing to carry generally, is not a common carrier. (*Ibid.*) W
- (d) A hackney coachman, or cabman plying for passengers is not a common carrier. (*Ibid.*) 498. X

1.—“Common carrier”—(Continued).

- (e) A general ship or boat carrying goods for all who offer, is such, but not where the letting is to a particular individual on specific contracts; and similarly one who removes household furniture on special contract on each occasion is not a common carrier. Collett on Torts. Y

(3) Common ferryman is a common carrier.

A common ferryman is a common carrier, and is bound to provide safe and secure ferry boats and safe ships and landing stages and all proper means and appliances for the safe transit of persons who may have occasion to use the ferry for themselves, or for the transit of their horses and carriages, luggage and merchandize. *Willoughby v. Horridge*, 12 C.B. 731. Z

In England it seems that an ancient or common ferry is a monopoly derived from royal grant, and that the ferryman is bound always to keep such a ferry up and is liable by indictment if he neglect to do so. *Lotton v. Gooden*, L.R. 2 Eq. 131. A

If the ferryman overloads the boat, and, for the safety of the lives of the passengers, it becomes necessary to throw some of the goods over, the ferryman will be liable to the owners thereof, but not if the necessity arose from a storm no default being in the ferryman. *Mouse's case*, 12 Co. 63. B

(4) Owners of sea-going merchantships.

The position of the owners of sea-going merchantships was considered in 3 M. 107 (110) in which it was held that they were common carriers, though not as defined in Act III of 1865. 26 B. 562 (570)=4 Bom. L.R. 447. C

(5) Owners of a fleet of steam-ships plying periodically along the coasts of British India.

The defendants were owners of a fleet of steamships plying periodically along the coasts of British India, by which they undertook to convey for freight parcels of goods for all persons indifferently from and to specified ports. They stipulated in their bills of lading that claims for short delivery should be made at the port of Calcutta only, and within one month after delivery of any portion of the goods entered in the bill of lading.

Held, that defendants were common carriers, though not for the purposes of the Indian Carriers Act, and that their character of carriers continued so long as the goods remained in their hands and undelivered. 3 Mad. 107. D

(6) Carriers by sea from port to port.

Carriers by sea, for hire, are common carriers by the common law of England. 28 M. 400. But see 6 C. 227 where it was held or Foreign Steamship Company was not a common carrier in the ordinary English sense.

Act III of 1865 does not apply to common carriers by sea; but as to the liability of owners of sea-going ships, the Merchant Shipping Acts 17 and 18 Vict. C. 104, S. 503, and 25 & 26 Vict. 63, S. 54, may be consulted. E

(7) Carrier—Dak-carriage proprietor—Bailee for hire—Negligence—Onus of proof.

A person carrying on the ordinary business of a proprietor of dak-carriages does not come within the term “common carrier” as that term is understood in the English law. Such a person is bound to exercise

1.—“Common carrier”—(Concluded).

reasonable and ordinary care in respect of baggage entrusted to him, but is not responsible for any loss which may not arise from the negligence or default of himself or his servants, he not being a common carrier bound to ensure the safe conveyance of the baggage against all risk save the act of God or the Queen's enemies. He is to be regarded as a bailee for hire, and the fact that he does not deliver the baggage at the end of the journey should be accepted as *prima facie* proof that the loss has been occasioned by negligence for which he is responsible, and, consequently the *onus* of proof lies on him that reasonable care was exercised by him. 2 N.W. 237. F

(8) Railways dealt with in exceptional manner—Reason.

The Railway Act of 1890 reduces the responsibility of carriers by railway to that of bailees under the Act of 1872. 18 Cal. 620 (628). G

But then it declares that nothing in the common law of England, or in the Carriers Act, 1865, shall effect the responsibility of carriers by railway. 18 Cal. 620 (628). H

The reason for dealing with railways in this exceptional manner may perhaps be found in the circumstance that railways in India are to a great extent in the hands of the Government, and it will be remembered that the Government is excepted from the definition of a common carrier in the Act of 1865. 18 Cal. 620 (628). I

2.—“Government.”

[See the Proceedings of the Council, *supra*.]

(1) Indian Government—Post Master General.

The Indian Government, like the Post Master General, is not responsible for loss or damage occurring to anything entrusted to the Post Office for conveyance. 1 M.H.C. 200. J

A common carrier is by the law of England responsible for all losses, unless occasioned by the act of God or the Queen's enemies; but the Post Master General is under no such responsibility. 1 M.H.C. 200 (202). K

(2) Carriers—Conveyance of goods by Government bullock train—Post Office Act, XIV of 1866—Bailee for hire—Negligence—Condition.

Goods conveyed by the Government bullock train are entrusted to the Post Office for conveyance within the meaning of Act XIV of 1866. In respect of the Government bullock bailee train, Government must be regarded as an ordinary bailee for hire, and not as a common carrier. As such bailee, apart from any special conditions limiting its liability, it is bound to take ordinary care of goods entrusted to it for conveyance; and if goods are stolen through the negligence of its servants, it is liable to make good the loss to the consignor. But it may, as may any other bailee for hire, limit its liability by conditions, provided those conditions are not repugnant to public policy or positive law. A condition that it will not be responsible for loss occasioned by the negligence of its servants is certainly not repugnant to positive law, nor a condition repugnant to public policy. 3 N.W. 195. L

3.—“Person.”

Definition of “person.”

See as to the —, General Clauses Act, X of 1897, S. 3, Sub-S. 39. M

3. No common carrier ¹ shall be liable for the loss ² of or damage to

Carriers not to be liable for loss of certain goods above one hundred rupees in value, unless delivered as such.

property delivered to him to be carried exceeding in value one hundred rupees ³ and of the description contained in the schedule to this Act, ⁴ unless the person delivering such property to be carried, or some person duly authorised in that behalf, shall have expressly declared ⁵ to such carrier or his agent the value ⁶ and description thereof.

(Notes).

Principle embodied in English Carriers Act extended.

The earlier sections extend to India the principle embodied in the English Statute II Geo. IV and I Will Cap. 68. They relieve Carriers from the extraordinary liabilities which would be imposed on them by the delivery to them, without notice, of articles of peculiar value or perishableness. Any customer, delivering to the Carrier any of the articles enumerated in the Schedule must declare them, and then the Carrier may charge at a higher rate for the additional risk, in conformity with a scale to be publicly exhibited in his place of business. Under the ordinary Law of Contract, the Carrier might relieve himself from liability by such a notice, but it would be necessary to bring the notice home to the customer by evidence. From the necessity of giving such evidence, the Carrier will now be relieved by this enactment. See Statement of Objects and Reasons. N

1.—“Common carrier.”

See notes under S. 2, *supra*.

2.—“Loss.”

(1) Loss, scope of the expression.

- (a) The word “loss,” includes loss caused by the criminal misappropriation of the parcel by a servant of the Carrier in charge thereof. 19 B. 159 ; 5 M. 208 (212). O
- (b) The term “loss” is not to be limited to accidental loss but would cover also cases where the loss was occasioned by the gross negligence or criminal acts of the Carriers’ servants. (*Ibid.*) P
- (c) A loss of season or market is within S. 1 of the English Carriers Act, 1839 (I Will. IV, c. 68) (*Cf.* present section). *Wilson v. L. & Y. Ry. Co.*, 9 C. P. (N. S.) 632. Q
- (d) So also a loss through delivery to a wrong person by mistake. *Moritt v. N. E. Ry. Co.*, L. R. 1 Q.B.D. 302 (308). R
- (e) So also a temporary loss necessitating the replacing of articles by the owner. *Millen v. Brasch*, L. R. 10 Q.B.D. 142. S
- (f) The loss ought to be a loss by the carrier and not a loss by the owner merely in consequence of the non-delivery of the article in due time. *Hearn v. L. & S. & W. Ry. Co.*, 10 Ex. 793. T

(2) Delay from temporary loss.

S. 1 of the English Carriers Act, 1839, protects the carrier from the consequences of delay in delivering the goods owing to a temporary loss. *Wallace v. Dublin and Belfast Junction Ry. Co.*, 1 R. S. C. L. 341. U

2.—“ Loss ”—(Concluded).

(3) Delay, where no loss.

But not against delay in delivery, where there is no loss of goods. *Hearn v. L. and S. W. Ry. Co.*, 10 Ex. 793. Y

3.—“ Exceeding in value one hundred rupees.”

Section, scope of.

This section declares that, where the cost of valuable goods sent through carrier exceeds Rs. 100 in value, the carrier cannot be held liable for loss of them unless the sender had declared their nature and value and paid higher charges for the increased risk, the word “value” in the section clearly meaning the price for which they would usually sell at the time in the market. (In the Sadar Court of the Province of Sind in 31st Dec. 1894). W

N.B.—See notes under the Schedule, *infra*. *

4.—“ Of the description . . . Act.”

(1) Articles within S. 1 of the English Carriers Act, 1830.

- (a) Ivory, black, and agate bracelets, shirt pins, common gilt rings, brooches, tortoise shell purses, glass smelling bottles. *Bernstein v. Bazendle*, 6 C.B.N.S. 251. X
- (b) Ivory fans. *A. G. v. Hartly*, 5 Russ. 173. Y
- (c) A chronometer, *Le Conteur v. L. and S.W. Ry. Co.*, L.R. 1 Q.B. 541. Z
- (d) Maps with their cases, *Wylde v. Pickford*, 8 M. and W. 443. A
- (e) Pictures with their frames, *Henderson v. L. and N.R. Ry. Co.*, L.R. Ex. 90. B
- (f) Prints and coloured prints, *Boys v. Pink*, 8 C. and P. 361. C
- (g) A looking glass, *Owen v. Burnett*, 2 C. and M. 353. D
- (h) Silk dresses, *Flower v. S.E. Ry. Co.*, 16 L.T.N. S. 329. E
- (i) Silk tights and hose, *Hart v. Bazendle*, 6 C.B. N.S. 251. F
- (j) Elastic silk webbing. *Bunt v. Midland Ry Co.*, 2 H. and C. 889. G
- (k) And possibly the packing case, if it contained only articles within S. 1 of the English Carriers Act, 1830. *Irwin v. G.E. Ry. Co.*, L.R. 3 C.P. 308. H

(2) Articles not within S. 1 of the English Carriers Act, 1830.

- (a) German silver fuzee boxes, *Bernstein v. Bazendale*, 3 C.B.N. 251. I
- (b) A document in the form of a bill of exchange accepted by the person to whom it was directed, but having no drawer, and found by the jury to be of no value when delivered to the Carrier. *Stoessiger v. S. E. Ry. Co.*, 3 E. and B. 549. J
- (c) Painted carpet-designs. *Woodward v. L. and N.W. Ry. Co.*, 3 Ex. D. 121. K
- (d) The frame of a silk vestment not usually framed. *Treadwin v. Nelson*, 6 C.P. 58. L
- (e) A packing case containing some articles not within S. 1 of the English Carriers Act, 1830. *Treadwin v. G.E. Ry. Co.*, L.R. 3 C.P. 308. M

(3) Articles which must be declared under the Indian Act.

See Schedule, to this Act and to the Railways Act, 1890. N

5.—“ Unless....declared.”

(1) S. 1, English Carrier's Act, 1830, Will. IV, c. 687.

According to this section contractors, coach proprietors, and carriers, held, not liable for loss of certain goods above the value of £ 10, unless delivered as such and increased charge accepted. O

(2) Formal notice of nature of goods not necessary.

A formal notice of the nature of the goods is not necessary, if it is in fact brought to the notice of the Company what the goods are, and their value is sufficiently stated to enable the carrier to fix the additional charge he is entitled to make. 19 W.R. 800 (*Eng.*). P

(3) Declaration of value necessary.

(a) Under this section the value and contents of articles exceeding Rs. 100 sent through the common carrier should have been declared. Where this is not done, the common carrier is not responsible for the loss of the goods. *Secretary of State v. Dovidia Ram*, (1894) Sadar Court of Sind. Q

(b) Under this section it is necessary that both the value and the contents of the parcel if over Rs. 100 in value should be declared, before the common carrier can be held liable in respect thereof. See 19 B. 159.R

(4) Declaration of valuable goods, essentials of.

(a) “ The declaration must come from the sender, and must be so expressed as to be understood by the carrier as such, and as I think, understood also as the foundation of a contract.” *Per Byles, J.*, in *Robinson v. The South Western Ry. Co.*, 31 L.J. C.P. 234 ; cited in 19 B. 165 (180).S

(b) “ The declaration must be made with the intention that it should so operate as to entitle the common carrier to charge the higher rate.” *Per Smith, J.*, in (*Ibid.*) T

(c) The conditions of this section are not fulfilled by the sender merely giving an account of the quantity and description of the goods delivered for carriage, when required to do so by the booking clerk. See 5 M. 208.U

(d) Where a box containing 7 bars of silver valued at Rs. 4,296—10—9 had been delivered to a common carrier for carriage to a certain place, held, that to establish the liability of the common carrier in the case of excepted articles, the declaration required by this section must be made in such a manner as to intimate that the sender invites the common carrier to undertake the special risk and is willing to pay the increased charge. (*Ibid.*) Y

(e) A person who sends or delivers the parcel containing any of the valuable articles specified must take the first step by giving that information as to its contents to the carrier which he alone can give, and if he does not take that first step, he could not maintain an action, as S. 1, the English Carriers Act, 11 Geo. IV and 1 Will IV, c. 68, says that the carrier shall not be liable unless the declaration is made. *Buzendale v. Hart*, 6 Ex. 769, cited in 19 B. 165 (176). W

(f) To write outside the package the nature of the contents is not sufficient declaration. *Owen v. Burnett*, 2 C. & M. 353. X

(5) Omission to declare value and nature of goods, effect of.

Where the consignor, at the time of delivering valuable property to the common carrier's clerk, omitted to declare the nature and value thereof as required by the section, the common carrier cannot be held to be liable as bailees under the Indian Contract Act. 19 B. 165. Y

5.—“ Unless . . . declared ”—(Continued).

(6) Valuable article not declared—Liability—Protection.

(a) Where the value of an article of the kind specified in the schedule has neither been declared nor insured, a common carrier is not liable for non-delivery of the same. See 9 M. 310. Z

(b) The protection from liability, conferred on the common carrier by this section in cases in which the value of such property is not declared and the higher charge paid, does not cease on arrival of the parcel at the place of the destination but extends to the period at which the consignee takes delivery. (*Ibid.*) A

(7) Uninsured goods.

Plaintiff presented a bale of silk at the Railway Station at A for transport by rail to M. He was requested by the Railway Company to “ insure ” but declined to do so, engaging that the goods should go at the owner’s risk. When the bale was delivered at M it was discovered that the silk had been abstracted and hemp substituted. *Held*, under the circumstances, that the Railway Company were protected by S. 10, Act XVIII of 1854 (*Cf.* present section). 96 P.R. 1868. B

(8) Uninsured goods—Theft by Company’s servants.

Where plaintiff delivered two parcels of shawls to a Railway Company declaring the nature of the contents of the parcels, but saying nothing about their value, and one of the parcels was not delivered to the plaintiff at his destination, and he sued the defendants for its value, alleging that they had been stolen, *held* that the plaintiff was bound to declare the value of the shawls. The plaintiff could only be excused from doing so by the defendants voluntarily or involuntarily leading him to believe that such a declaration was unnecessary, and he was protected from loss without making it. 29 P.R. 1872. C

(9) If value declared, carrier liable.

(a) If the value and nature of the articles is declared, the common law liability of the carrier revives, whether he demands an increased charge or not. *Behrens v. G. L. Railway Co.*, 6 H. & N. 366. D

(b) Prior to the carrier being made liable, the value and nature of the contents of a parcel must be declared. *Hart v. Buxendale*, 6 Ex. 769. E

(c) The necessity of declaring the nature of the articles is not put an end to, by the fact that the nature of the articles are obvious to conjecture or guess. *Boys v. Pink*, 8 C. & P. 361. F

If a package consists partly of enumerated articles above Rs. 100 in value, and partly of others, the liability for these latter continues though for the want of a declaration there is no liability for the former. *Nernstein v. Buxendale*, 28 L. J. 265, C. P. G

(10) Carriers Act (III of 1865), Ss. 3, 8 and 9—Through booking of goods by steamer and rail—Liability of Steamer Company for loss during transmission by rail—Railways Act (IX of 1890), S. 75.

The plaintiffs consigned a parcel of silk articles through the India General Steam Navigation and Railway Company, Ltd., for delivery at Khagra, knowing that the articles would be carried in the first instance by the defendant company, then by the Eastern Bengal State Railway and then by the East India Railway Company. They did not declare the value of the articles which exceeded Rs. 100 nor disclose the contents of the parcel. It was found that the goods were lost after they have had been made over to the Eastern Bengal State Railway. •

5.—“ Unless . . . declared ”—(Concluded).

Held—That the agreement was in substance with both the Steam Navigation Company and the Railway Companies and the former could not be held responsible for the loss. 11 C.W.N. 1076. See, also, 13 P.R. 1866.

“ In this view I am supported by high authority in the Courts in England.” In the case of *Le Conteur v. The London and South Western Railway Company*, L.R. 1 Q.B. 54 (1865), which followed the case of *Pianciani v. The London and South Western Railway Company*, 18 C.B. 226 (1856), Cockburn, C.J., laid down the law as follows :—

“ Now it cannot be disputed that the article in question was an article that came within the provisions of the Carrier's Act. But it was said that the provisions of the Act were not applicable to the case because the contract was one to carry both by land and by water, the contract was not divisible; and, therefore, although the article was lost on hand, that it was not within the terms of the Carriers Act. I think that that argument fails both on principle and on authority; on authority because the point was directly before the Court of Common Pleas in the case of *Pianciani v. The London and South Western Railway Company*, 18 C.B. 226 (1856), in which the Court expressed the strongest opinion that the contract was divisible; and that so far as the carriage by land was concerned, the Carriers Act would afford a protection and defence to the Company in the event of the terms of that Act not being complied with, and I must say I entirely concur in the view so taken and expressed by the Court. It would be a matter of most serious inconvenience if companies established for the purpose of conveying goods by land, but having one of the termini of their Railway connected with water communication, should be prevented (as they would practically be) from affording the public the great accommodation which arises from being able to send goods to the ultimate place of destination, the water carriage included without the necessity of separate contracts with separate Companies. If that accommodation were withdrawn from the public, as it might be, if, so far as the land carriage is concerned companies were deprived of the protection the Act of Parliament affords, it would be a matter of very serious inconvenience and damage to the public; and I see no reason why that damage and inconvenience should be inflicted upon the public, at the same time that loss would accrue to the Companies from not having the opportunity which they at present possess of making the entire contract. I see no reason why the contract should not be held to be divisible, and the carrier protected so far as the land carriage is concerned by the Act of Parliament.” 11 C.W.N. 1071 (1074, 1075) = 34 C. 419. See, also, 10 C.W.N. 1076. H & I

6.—“ Value.”

“ Value” meaning and scope of the term.

- (a) The term “ value” refers to the intrinsic value at the time the parcel was delivered to the railway. *Stoessieger v. S. E. Ry. Co.*, 3 E. and B. 549.J
- (b) The word “ value” clearly means market-value of the articles, the price for which they would usually sell at the time in the market. (In the Sadar Court of the Province of Sind, 31st Dec. 1894). K

6.—“Value”—(Concluded).

(c) The words “the value” mean that value at *destination*, and not at place of despatch which *represents the proper measure of damages* in the event of loss of the goods. (*Ibid.*) L

(d) Discount allowed by the seller to the particular purchaser or consignee cannot legally be deducted from the “said value.” (*Ibid.*) M

For carrying such property, payment may be required at rates fixed by carrier¹.

4. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix.

Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate² of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

(Notes).

1.—“For carrying . . . by carrier.”

(1) Loss of valuable articles—English and Indian laws similar.

(a) Where the servants of a carrier received a box containing gold and silver coins, and the person delivering the same declared their value and nature, he was not bound to tender, but the carrier, must demand, the increased charge for insurance. 19 C.538 (*dissented from* in 19 B. 165). N

(b) And if no such demand was made, the carrier would be liable for the loss of, or injury to, the goods, although the increased charge was not paid. (*Ibid.*) O

(c) The words of the English Act, 11 Geo. IV and 1 Wm. IV, C. 68, S. 1, and the words in the present section are practically the same so far as this matter is concerned. (*Ibid. Great Northern Ry. Co. v. Behrens*, 7 H & N. 950, F.) P

(2) Omission to demand extra charge for valuation.

(a) The benefit of this section cannot be given to the carrier where they had received valuable goods after declaration of value without demanding an extra charge for insurance, and where the excess charge was not at all brought to the notice of the consignee, the carrier will be liable for the loss of, or injury to, the goods, although the increased charge has not been paid. 19 C. 538 (541). Q

(b) Where a carrier receives goods of the description mentioned in 11 Geo. IV and 1 Wm. IV, Ch. 68, and the person delivering the same has declared their value and nature, he is not bound to tender, but the carrier must demand, the increased charge mentioned in the notice affixed in the office, warehouse, or receiving house, whether the goods are there delivered or to a servant sent to fetch them; and if no such demand is made, the carrier is liable for the loss of or injury to, the goods, although the increased charge has not been paid. *The Great Northern Ry. Co. v. Behrens*, 7 H. & N. 950, cited in 19 C. 538. R

1.—“For carrying....by carrier ”—(Concluded).

(3) Waiver of declaration.

*There may be a waiver of the declaration ; but the mere receipt of the goods by the carrier, the apparent value of which is beyond the sum for which a declaration is required is not such ; but if the sender declares the value he is not bound to tender the increased rate, and if the ordinary charge only is made, it is a waiver of the right to the higher rate and the carrier will be liable for loss or damage. *Behrens v. G. N. Ry. Co.*, 8 Jur. N.S. 59, 567 ; Story on B. 572. **S**

2.—“ Notice of the higher rate.”

Scope of section.

By S. 4 the increased rates cannot be charged, unless a tariff of such rates is stuck up in the office ; but the sender should declare the value though there is no such tariff. (*Ibid.*) **T**

5. In case of the loss or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

The person entitled to recover in respect of property lost may also recover money paid for its carriage.

6. The liability of any common carrier ¹ for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any public notice ; but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of Act XXII of 1863 (to provide for taking land for works of public utility to be constructed by private persons or Companies, and for regulating the construction and use of works on land so taken) may, by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorized in that behalf by such owner, limit his liability ² in respect of the same.

In respect of what property liability of carrier not limited or affected by public notice. Carriers, with certain exceptions may limit liability by special contract.

Now Act I of 1894.

(Notes).

1.—“Common carrier.”

See Notes under S. 2. *supra*.

2.—“ May by special contract....liability.”

(1) Reason for alterations made—Agent signing special contract.

When the Bill was last before the Council the Hon'ble Mr. Maine had described the system of the Bill, which was that of the English law, as follows :—

2.—“May by special contract....liability”—(Continued).

If the goods for conveyance consisted of any of the articles enumerated in the schedule, that is, were unusually valuable or unusually perishable such as gold, jewels, paintings, engravings, or title-deeds, the customer, when committing them to the carrier must give a special description of their character and the value otherwise the carrier would be relieved from liability. On the other hand, the carrier was allowed to charge an additional rate as insurance against the augmented risk, in conformity with a scale of charges to be publicly exposed in his place of business. If, however, the goods were of an ordinary kind, neither unusually valuable nor unusually destructible, the carrier would not be allowed to acquit himself of his obligations merely by putting up a table or board.

Mr. Justice Levinge, however, had called the attention of the Select Committee to an evasion of the rule which was not uncommon in England, and had suggested that the carrier might perhaps cause the coolie who brought the article for carriage to sign or put his mark to some paper and that would constitute a special contract. Mr. Justice Levinge, had, therefore, suggested and the Select Committee had accepted the suggestion, that, when a special contract limiting the liability of the carrier was signed, the agent signing should be always an agent expressly authorized to bind the customer. **U**

[See Proceedings of the Council].

(2) Law prior to 1865.

Before 1865, there was Act XVIII of 1854 relating to Railway Companies, and, it may be noticed that, the right of limiting their liability by private contract even when such contract was reasonable was not given to them as in the case of English Railway Companies by the corresponding English statute passed about the same time, and the companies were expressly made answerable for the gross negligence or misconduct of their servants. 32 M. 94 (124). **Y**

(3) S. 6 of the English Carriers Act, 1830 and the present section.

S. 6 of the Act, like S. 6 of the Statute, declares that common carriers may limit their liability by contract with the important limitation that in the case of an agent of the owner of the goods he must be duly authorised in that behalf. (*Ibid.*) **W**

This deviation from the English law was made to prevent common carriers from securing the signature of the coolie to what may afterwards be pleaded as a contract against the owner. (*Ibid.*) **X**

[N.B.—See also notes under S. 8, *infra*.]

(4) Liability limited by special contract—Ss. 6 and 8—English and Indian law.

When there is no express law as to notices, the rule is, that a common carrier being ordinarily an insurer of the goods he carries, may expressly limit his liability by giving notice that he will not be liable for certain losses, or for certain valuable goods unless paid for at higher rates. Story on Bailments (549) 554.

But it seems the better opinion, that he cannot, by such notices, be allowed to limit his liability for loss by the wrongful conversion of the goods by himself or his servants, or for loss from gross negligence, that is,

2.—“May by special contract....liability”—(Continued).

from the want of ordinary diligence or from defects in his vehicles, or from a delivery to a wrong person. Story on Bailments, 549, 554, 570, 571 (a).

Now by S. 6 of Act III of 1865, inland carriers in India cannot generally limit their liability by notices; there must be a special contract signed by the owner or his agent, except as to certain articles, as coin, notes &c., enumerated in the Act and when these exceed Rs. 100 in value, the sender must declare their value and the carrier may demand an increased rate of hire. See Collett on Torts.

But by S. 8, in every case and as to all articles, every such common carrier will be liable for loss or damage arising from the negligence, or criminal act of the carrier or of any of his agents or servants. (*Ibid.*)

All actually, though casually, employed in carrying are his servants, though they may be the regular servants of others and paid by them. *Maclin v. London &c. Ry. Co.*, 2 Exch. 426.

The English rule now is, that he may thus limit by contract his liability for loss even from gross negligence. *4 P. & O.S.N. Co. v. Shand*, 11 Jur. N.S. 771.

But the soundness of the rule to this extent seems doubtful; the law was once otherwise, and is so in America. Story on B. 549-a; 2 Hilliard. 571-5; Addison, 395.

Such notices will otherwise be construed as to their terms like other contracts. The notice must be brought home to the knowledge of the consignor, Story on Bailments, 558, 560.

And the carrier is bound to the strict performance of his terms; so that he cannot send the goods by a different conveyance, or in a different manner from that agreed upon or he will be liable for any loss; he may be liable for loss from defective vehicles, unless the notice includes such loss. *Id.* (561) 562.

The consignor, on the other hand, is bound duly to pack the goods; and he may not practice a fraud on the vigilance of the carrier, as by sending bank notes in a bag stuffed with hay, so as to give it a mean appearance. *Id.* (563) 565; *Gibbon v. Paynton*, 4 Burr. 2298.

Where there is a notice limiting the liability as to valuable goods, or where the goods are among those enumerated in Act III of 1865, and exceed Rs. 100 in value, an omission to declare the contents is an implied holding out that the goods are of the ordinary value; the sender must declare the value but otherwise the carrier is bound to make the inquiry. Story on Bailments, 569.

But it would seem that though the sender does not declare the value as required by S. 3, yet, by S. 8, a carrier would still be liable for loss or damage, if arising from the negligence or criminal act of himself or servants, but not otherwise. *Metcalfe v. London &c., Ry. Co.*, 27 L.J. 205 (393) C.P.; *Har v. Bazendale*, 6 Exch. 769. Y & Z

(5) Combined effect of Ss. 6 and 8 of the Act—Duties and liabilities of common carrier governed by principles of English common law recognized in Carriers Act.

That the duties and liabilities of a common carrier are governed in India by the principles of English common law on that subject, however introduced, has been recognised by the Indian Legislature in the Carriers

2.—“May by special contract....liability”—(Continued).

Act, 1865, an Act framed on the lines of the English Carriers Act of 1830 (11 George IV and 1 William IV, Ch. 68). His responsibility does not originate in contract, but is cast upon him by reason of his exercising this public employment for reward. His liability as an insurer is an incident of the contract between him and the owner, not inconsistent with the provisions of the Contract Act; and the law of carriers, partly written and partly unwritten, remained as before the Act. The combined effect of Ss. 6 and 8 of the Act of 1865, is that, in respect of property not of the description contained in the schedule, common carriers may limit their liability by special contract, but not so as to get rid of liability for negligence. *The Irrawaddy Flotilla Company v. Bugwan Das*, 18 C. 620 (P.C.) = 18 I.A. 121. (Approving 10 C. 166 and dissenting from 3 B. 109). **A to D**

(6) Absence of special contract liability of Carrier.

In the absence of a special contract, a carrier is liable for loss by the common law. 10 C. 166 (172); 19 C. 538. **E**

(7) Reasonable condition—Common carrier—Liability.

A stipulation by persons carrying on extensive business as carriers that they should be apprised of claims made on them for default on the part of their servants at a specified place and no other and within a time which will render inquiry likely to be attended with some result is not unreasonable. 3 Mad. 107.

The defendants were owners of a fleet of steam-ships plying periodically along the coast of British India, by which they undertook to convey for freight parcels of goods for all persons indifferently from and to specified ports. They stipulated in their bills of lading that claims for short delivery should be made at the port of Calcutta only, within one month after the delivery, of any portion of the goods entered in the bill of lading.

Held, in a suit against defendants for compensation for value of goods short delivered, that this was not an unreasonable stipulation, and that a claim made on agents of the defendants, who were authorized only to retain the goods, receive and freight, and give delivery, was not a sufficient compliance with the condition. 3 Mad. 107. **F & G**

(8) Bill of lading—Stipulation relieving shipowners from liability as soon as goods free of ship's tackle, and before delivery, if enforceable—Loss of goods after delivery to landing agent but before delivery to consignee.

Where the bill of lading provided that “in all cases and under all circumstances the liability of the ship-owners shall absolutely cease when the goods are free of the ship's tackle, and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee,” and the goods were delivered overside into lighters and taken to the wharf and kept by a “landing agent,” and then disposed of without the production of a bill of lading or a delivery order in fraud of the persons entitled.

Held—That there was no reason why the clause providing for cesser of liability of the ship-owner on the goods being free of the ship's tackle should not be held operative and effectual although they might have been lost before delivery to the persons entitled. The stipulation was

2.—“May by special contract....liability”—(Continued).

one which the parties were perfectly free to make, unembarrassed by any implied condition or any original underlying obligation, such as exists when a ship-owner seeks to relieve himself of liability to the shipper in case his vessel should be found to have been unseaworthy. 13 C. W. N. 793. H

Semble.—They are intermediaries owing duty to both parties—agents of the ship-owners as long as the contract of affreightment remains unexhausted, agents for the consignees as soon as the bill of lading is produced with delivery order endorsed. (*Ibid.*) I

(9) *Ibid*—Construction—River—Navigation in India—Difficulties or casualties of navigation.

Plaintiff sued to recover the value of certain hides which were lost in defendant's flat. The bill of lading contained, among other exceptions, the words “difficulties or casualties of navigation and all and every danger and accident of the river and navigation whatsoever.” In evidence it was proved that the flat was destroyed by some projection embedded in the river. Held that the casualty was comprised among the exceptions in the bill of lading, and further that, having regard to the dangerous navigation of Indian rivers, parties entering into contracts of a similar nature should protect themselves by insurance 1 Ind. Jur. O. S. 125 ; 1 Hyde 283. J

(10) Carriers—Foreign carriers—Applicability of law *lex loco contractus*—Common law of England—Contract protecting carriers from liability—Legality.

Goods were carried on the defendants' ship from Calcutta to Madras under a bill of lading which contained a clause that the defendant company was not answerable for any fault or negligence whatsoever of the Captain of the ship, nor of pilots, seamen, or other persons on board its vessel in whatever capacity. On arrival at Madras the goods were delivered by the defendants' servants in rain, and part of them were damaged by wet. The plaintiff claimed damages from the defendants for negligence and misfeasance in delivering the goods so damaged.

Held, that the contract, having been made at Calcutta, whatever the nationality of the defendants or their ship was, the law applicable to them was the *lex loci contractus*. The *lex loci* was the law of England, and the English law as to common carriers applied to them. Under the English law applicable to common carriers, the common carrier might enter into any contract so as to protect himself, but it could be done only by clear, definite and unambiguous words. The acts of the defendants' servants in delivering the goods in rain instead of delaying delivery until the weather was fine, amounted only to negligence and not to deliberate misfeasance, and, consequently, the defendants were protected from liability by the provisions contained in the bill of lading. 28 M. 400. K

(11) Ss. 6, 8—Carriers Act, 1865—Loss by accident—Negligence.

Where a flat belonging to the defendants, carrying goods belonging to the plaintiff, under conditions printed on the back of a forwarding note signed by the plaintiff, one of which stating that they were not to be held liable for accidents and for negligence was lost by coming into contact with a snag in the bed of a certain river, the existence of which

2.—“May by special contract....liability”—(Concluded).

snag, could not have been ascertained by any precautions on the part of the defendants, *held* (a) that the loss was not due to the negligence of the defendants, (b) that the forwarding note was a special contract within the meaning of the Carriers Act, (c) that the clause affording protection to the defendant from negligence was bad as being in contravention of the Carriers Act. 17 C. 89. **L**

(12) Liability of, for negligence and damage to goods—Bill of lading—Provisions as to exemption from liability, effect of.

The goods (rice bags) belonging to the plaintiff were shipped in a steamer belonging to the defendant company for delivery to the plaintiff's agent at another port, and, on arrival at that port, were placed by the Company on the foreshore, where, however, they were destroyed under the orders of the Municipal authorities, on the ground that they had become damaged by rain and unfit for consumption. The condition in the Bill of lading ran thus:—"In all cases and under all circumstances, the liability of the Company shall absolutely cease; when the goods are free of ship's tackle, and, thereupon, the goods shall be, for all purposes and in every respect, at the risk of the shipper and consignee." In a suit by the plaintiff for recovery of the value of the rice so damaged, *held*—per *Subramania Aiyar, J.*—The Company, in landing the goods without precautions to prevent damage to them, failed to take the same care of the plaintiff's goods as a prudent person would, in similar circumstances, have taken of like goods of his own, and the damage was, therefore, the result of the company's negligence. The condition in the Bill of lading puts an end to the Company's liability as carriers, when the goods leave the ship's tackle, but constitutes their subsequent possession, until delivery, as that of baillee. For, if it were otherwise, the Bill of lading might be construed so as to exempt the Company even from wilful misconduct on the part of the Company's servants. [10 Q. B. 256, *F.*; 26 L. T. 704, *Cons.*; 22 B. 184, *It.*] 30 M. 79 = 16 M.L.J. 573 = 1 M.L.T. 367. **M**

Per *Miller, J.* (contra)—The Company are amply protected, against all responsibility, by the terms of the Bill of lading and are, therefore, not liable for damages. The general exception of negligence will apply to all stages of the transaction covered by the contract, and is not restricted to that stage during which the goods are actually in the ship. [13 B. 571, 10 C. 486, *Compd.*] (*Ibid.*) **N**

But if there is a special clause dealing with a particular state of the transaction, that must be applied, to the exclusion of the general exception. [22 B. 184, *Compd.*] (*Ibid.*) **O**

It has been frequently held that an exception against negligence is valid if clearly expressed. [10 C. 489, 13 B. 571, *F.*] 1 M.L.T. 387 = 16 M. L.J. 573 = 30 M. 79. **P**

(13) Agreement with Jute Company.

A Jute Company shipped some jute by a Steamer Company and agreed "to hold the Steamer Company harmless and indemnified from and against all claims which can be insured against:"

Held, that the agreement did not extend to loss arising from negligence or criminal acts of the Steamer Company's servants. 9 Ind. Cas. 364. **Q**

7. The liability of the owner of any railroad or tramroad constructed under the provisions of the said Act XXII of 1863, for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any special contract; but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

Liability of owner of railroad or tramroad constructed under Act XXII of 1863, not limited by special contract. In what case owner of railroad or tramroad answerable for loss or damage.

(Notes.)

(1) Legislative changes.

S. 7 (so far as it relates to railways) has been repealed by the Indian Railways Act, 1890 (9 of 1890), Ch. VII, S. 72, Genl. Acts, Vol. IV. **R**

(2) Nature of the section.

By S. 7 owners of railroads and tramroads (unlike other inland carriers) are not allowed to limit their liability as to articles not enumerated by any special contract; but, on the other hand, they are liable for loss or damage only when it shall have been caused by negligence; or by a criminal act on their part or on that of their agents or servants. (See Section). **S**

8. Notwithstanding anything hereinbefore contained, every common carrier¹ shall be liable to the owner for loss of or damage² to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the negligence³ or criminal act of the carrier or any of his agents or servants.

Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent.

(Notes.)

General.

(1) S. 8, Act III of 1865 and S. 8 of the English Carriers Act compared—Steamship Companies—English and Indian Law.

SEC. 8 (CAP. 68) OF XI GEO.

IV & WILL IV.

SEC. 8 OF ACT III OF 1865.

Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried, where such loss or damage shall have arisen from the negligence or criminal act of the carrier or any of his agents or servants.

Provided also, and be it further enacted, that nothing in this Act shall be deemed to protect any Mail contractor, Stage Coach Proprietor, or other common carrier for Hire from liability to answer for Loss or Injury to any goods or Articles whatsoever arising from the felonious Acts of any Coachman, Guard, Book-keeper, Porter, or other servant in his or their Employ, nor to protect any such Coachman, Guard, Book-keeper, or other servant from liability for any loss or injury occasioned by his or their own personal neglect or misconduct.

General—(Continued).

- "It is difficult for any one to read these two sections without coming to the conclusion that it is an emphatic repudiation by the legislature of the doctrine of English law that a common carrier may exempt himself from liability for the negligence of his agents or servants." **T**
Per Sankaran Nair, J. 32 M. 95 (125).
- "If we follow the process of reasoning adopted by the English Judges and apply to the steamship companies the rules of law declared applicable to inland common carriers, there is no reason why this principle embodied in Act III of 1865, S. 8, should not be applied to them as a rule of justice and equity." (*Ibid.*) **U**
- "It is impossible to hold that the law of common carriers *in this respect* is the same in India as in England." (*Ibid.*) **V**
- "When the Madras Government suggested that the railway companies in India might be allowed the same liberty as in England to enter into reasonable contracts, it was the opinion of Story quoted above and the American law that was expressly relied upon by Sir Henry Maine for not following the English law." (*Ibid.*) **W**
- "The rule of English common law adopted in India before 1865 was, as stated by the Chief Justice and Mitter J., (in 10 C. 166), the rule which imposes upon the common carrier the liability of an insurer." (*Ibid.*) **X**
- "There is nothing to show that the right of exemption by contract was ever recognised." (*Ibid.*) **Y**
- "It was the attempt of the common carriers to do so that led to this legislation. Is there any reason why in the absence of any legislation a different rule should be applied to carriers by sea in deviation of the course followed by the English Judges." (*Ibid.*) **Z**
- "If we adopt the conclusion of Brett, J.—*Liver Alkali Company v. Johnson*, (L.R. 9 Ex. 338) and *Nugent v. Smith*, (1 C.P.D. 19 and 423) that the law relating to the shipowners who carry goods for hire whether by inland navigation or abroad is based upon a custom, which has traces to Roman law, by which no insurer's liability attached to carriers by land, then we may possibly be justified in treating such carriers on a different footing." (*Ibid.*) **A**
- "But this view has been strongly dissented from by Cockburn, C.J., in the Court of Appeal in *Nugent v. Smith* (1 C.P.D. 19 and 428) and is not now accepted. On the other hand it is now settled beyond doubt that the liability of a shipowner is the same as that of a common carrier." 32 M. 95 (126). **B**
- "I am, therefore, of opinion that the English common law that has been accepted in India is the law as declared by Story and Lord Blackburn which is based on grounds of public policy applicable alike to England and India; that its further development as to exemption by contract due to the Carriers Act of 1830 for loss due to negligence has not been accepted in India, but, on the other hand, has been declared inapplicable, it ought to be followed as a rule of justice, equity and good conscience in cases similar to those dealt with by the legislature in the absence of any circumstances to the contrary, the principles embodied in Act III of 1865 ought to be followed. I am further of opinion that a rule of English common law ought not to be followed when it is opposed to the principles followed and acted upon by the Indian legislature." (*Ibid.*) **C**

General—(Continued).

"The question here is whether the contract exempting a shipowner from the consequences of the negligence of himself or his servants in not taking reasonable care or the care referred to in S. 151 of the Indian Contract Act is opposed to public policy and is therefore void. See S. 23, Indian Contract Act." Per *Sankaran Nair*, J. 32 M. 94 (126). **D**

"I have already pointed out that I can see no consideration for this stipulation." (*Ibid.*) **E**

"It has been held to be unreasonable in the case of railway companies (*Peck v. North Staffordshire Railway Company*, 10 H.L.C. 473) and in Carver's book it is admitted that the contract need not be reasonable." (*Ibid.*) **F**

"If the obligation is imposed upon a common carrier for the benefit of the public, he cannot claim exemption by virtue of an unreasonable stipulation." (*Ibid.*) **G**

"The reason why a common carrier is bound to receive goods tendered and the great responsibility of an insurer is imposed upon him is that necessity compels the owners of goods to trust him. This liability is imposed upon him in the words of Lord Mansfield 'to prevent litigation, collusion and the necessity of going into circumstances impossible to be unravelled'." (*Ibid.*) **H**

"As Best, C.J., puts it in *Ruley v. Horne* (5 Bing. Rep. 217 (220)) "When goods are delivered to a carrier, they are usually no longer under the eye of the owner.....If they should be lost or injured by the grossest negligence of the carrier or his servants, or stolen by them, the owner would be unable to prove either of these causes of loss; his witnesses must be the carrier's servants, and they, knowing that they could not be contradicted, would excuse their masters and themselves." 32 M. 95 (127). **I**

"For the above reasons it is essential that common carriers must in India also be subject to the English common liability and the Privy Council have now placed the matter beyond dispute." (*Ibid.*) **J**

"Where the obligation is imposed he cannot get rid of that obligation by agreement, if it is not reasonable. (*Ibid.*) **K**

"The Act III of 1865 has declared that the common carriers governed by that Act should not be allowed to claim exemption for negligence by contract and so far as they are concerned any such provision would be illegal." (*Ibid.*) **L**

"If the English law applies a shipowner may get the signature of a cooly who brings the goods, to any document which will be treated as binding on the cargo-owner, and this, in express terms, is prohibited by Act III of 1865." (*Ibid.*) **M**

"The reasons given by Lord Holt Mansfield and Abbot, C.J., are, it appears to me, conclusive to show that it is against policy to allow a claim for exemption as the one now put forward." (*Ibid.*) **N**

"There is practically no freedom of choice, and the persons when entrusting shipowners with their property are obliged to accept any condition that may be imposed upon them by the steamship companies." (*Ibid.*) **O**

General—(Concluded).

"The cargo-owners have no control over the servants, and it is only right that the master and not the cargo-owner should suffer for the misuse of his powers by the servant as he has armed him with those powers." (Ibid.) P

"The law which requires care and diligence on the part of a carrier will, otherwise, be illusory in the case of steamship companies as everything is left to the servants." (Ibid.) Q

"There will be a tendency to lax supervision over the servants, and to make their selection dependant more upon cheapness than on efficiency." 32 M. 95 (128). R

"Nothing is more easy than for the carriers to call their servants as witnesses and to prove *prima facie* that the goods were protected in the usual way. It would then be impossible for the plaintiff to bring negligence or criminality home to the carriers although the goods may not be forthcoming and no explanation given how the loss occurred." (Ibid.) S

I am quite alive to the fact that, if possible, we ought to follow the English law in this respect." (Ibid.) T

(2) Construction of ambiguous expressions.

Ambiguous expressions employed by a company for the purpose of limiting their common law liability have to be construed against the company. 30 M. 79 (83). U

A common carrier may protect himself from liability for deliberate acts of mischief of his servants if the words are clear and unambiguous. 28 M. 400. Y

It has been the policy of the English Courts in dealing with exemption clauses to recognise the distinction between the insurance risks and the carrying risks of a common carrier and to construe them as, not extending to carrying risks in the absence of clear words to that effect. In India where there is a statutory prohibition against exempting a carrier from loss arising from negligence or criminal acts, there is perhaps an even stronger reason for adopting this canon of construction at any rate, within the limits implied by this prohibition. 15 C.W.N. 226. *Price v. Union Lighterage Co.*, L.R. (1903) 1 K.B. 750 and on appeal L.R. (1904) 1 K.B. 412; *James Nelson and Sons, Ltd. v. Nelson Line (Liverpool) Ltd.*, L.R. (1907) 1 K.B. 769. W

The above rule is not limited in its application to bills of lading. 15 C.W.N. 226. X

(3) Railway Company not affected.

S. 8 does not affect the responsibility of a Railway Company. 17 M. 445. Y

A plaintiff who has transgressed the provisions of S. 10 of Act 18 of 1854, is not entitled to a decree even though the defendant's servants have been guilty as carriers, of negligence or criminal acts within the meaning of S. 8 of Act III of 1865. (1879) Select Case Part X, No. 32. Z

1.—"Common Carrier."

See Notes under S. 2, *supra*.

2.—“Loss or damage.”

See Notes under S. 3, *supra*.(1) **Loss—Meaning of.**

Loss in the Act means so that the things cannot be found not loss from delay in delivery. *Horne v. London &c. Ry. Co.*, 10 Exch. 801. **A**

The word “loss” applies to a case where the loss is caused by the criminal act of the servants of a carrier. 5 M. 208 (212). **B**

(2) **Damage for breach of contract to carry goods—Notice.**

(a) The damages recoverable for breach of contract to carry goods, must be such as may be reasonably supposed to have been in the contemplation of the parties at the time they made the contract as the probable result of the breach of it. *Horne v. Midland Ry. Co.*, L. R. 8 C. P. 131 (137). **C**

(b) Notice, that if the goods do not arrive in time they will be thrown upon owner's hands, is not such a notice of a lucrative contract by the owner as to enable him to recover his loss upon the contract. *Horne v. Midland Ry. Co.*, 8 C.P. 731. **D**

(3) **When special damage can be recovered.**

Where the object for which the goods are forwarded is expressly brought to the notice of the carrier or can reasonably be inferred by it, it is liable for damages naturally resulting from failure of the object. *Simpson v. L and N. W. Ry. Co.*, 1 Q.B.D. 274. **E**

(4) **Special damage when not recoverable.**

(a) Where goods are to be applied to a particular object not known to the carrier, damages which have arisen from failure of the object cannot be recovered. *Hadley v. Buxendale*, 9 Ex. 341. **F**

(b) Where the carrier undertakes to carry goods in waggons of a certain kind and the consignor does not deliver the goods to the Company because the waggons are not provided, but sells them on the spot, he cannot recover the difference between the price at the place where they were sold and the place to which they were to have been carried, there being nothing to show that the goods might not have been sent on by other means. *Irvine v. Midland and Gl. W. Ry. (Ir.) Co.*, 6 L.R. Ir. 55. **G**

(5) **Loss of contract.**

Nor can the owner recover damages he suffers, by reason of the failure of a contract with a third person to whom he had sold his goods. *Horne v. Midland Ry. Co.*, L.R. 8 C.P. 131. **H**

(5) **Hotel expenses.**

Nor—, in waiting for the goods, *Woodyer v. G.W. Ry. Co.*, L.R. 2 C.P. 818. **I**

(6) **Personal expenses.**

But he is entitled to his—in inquiring for the goods. *Hales v. L. and N. W. Ry. Co.*, 4 B and S. 66. **J**

(7) **Action for loss of goods—Damages.**

(a) In an action for the loss of goods, the damages are, as a rule, the market value at the time and place where they ought to have been delivered. See Browne on the Law of Railway Companies, p. 301. **K**

2.—“Loss or damage”—(Concluded).

- (b) If there is no market value, the price at the place of manufacture must be taken as the measure together with the cost of carriage and a reasonable sum for imported profit. *O'Hanlan v. Gl. W. Ry. Co.*, 34 L.J. Q.B. 154. **L**
- (c) If this test does not apply, the value must be taken to be the price at which the owner has actually sold them under a contract. See *France v. Gandal*, L.R. 6 Q.B. 199. **M**
- (d) Or the price at which the best substitute for the goods could be supplied. *Hinde v. Liddell*, L.R. 10 Q.B. 265. **N**
- (e) It appears not to be clearly settled whether, where there has been delay in delivery, and the market price has fallen in the interval between the time when the goods ought to have been delivered and the time when they are delivered, the difference in price can be recovered. *The Parana*, 1 P.D. 452. **O**
- (f) In the case of land carriage, the authorities appear to show that damages for depreciation of market price can be recovered. *Wilson v. Lancashire and Yorkshire Ry. Co.*, 9 C.B.N. S. 63. **P**

3.—“Negligence....agents or servants.”

[See notes under General, *supra*.]

(1) Negligence.

- (a) In *Blyth v. The Birmingham Water-works Company*, (1856) 11 Exch. 781, Baron Alderson says :—“Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. The defendants might have been liable for negligence if unintentionally they omitted to do that which a reasonable person would have done or did that which a person taking reasonable precaution would not have done.” 13 Bom. L.R. 347 (348). 12 Bom. L.R. 73 (84). **Q**
- (b) “Negligence will not be a ground of legal liability unless the party whose conduct is in question is already in a situation that brings him under the duty of taking care.” 12 Bom. L.R. 73 (84). **R**
- (c) “The definition of negligence is the absence of care according to the circumstances.” *Per Willes, J., Vaughan v. Taff Vale Ry. Co.*, 5 H. and N. 679 (687). **S**
- (d) “The confusion seems to have arisen in using the word ‘negligence’ as if it were an affirmative word, whereas, in truth, it is a negative word; it is the absence of such care, skill and diligence as it was the duty of the person to bring to the performance of the work which he is said not to have performed.” *Per Willes J., in Grill v. Gen., Iron-Screw Colliery Co.*, L.R. 1 C.P. 600. **T**
- (e) Negligence depends on the circumstances of each case. *Ford v. L. and S. W. Ry. Co.*, 2 F and F 730 (732). **U**
- (f) Negligence is a question of mixed law and fact. *Met. Ry. Co. v. Jackson*, L.R. 3 App. Cas. 193. **V**
- (g) “It is not, in many cases, practicable completely to sever the law from the facts.” (*Ibid*). **W**

3.—“Negligence....agents or servants”—(Continued).

(h) “The Judge has to say whether any facts have been established by evidence from which negligence may be reasonably inferred; the jurors have to say whether, from those facts when submitted to them, negligence ought to be inferred.” *Per* Lord Cairns in (*Ibid.*). X

(i) “*Badley v. The London and North Western Railway Company*, 1 A.P. 754 (1876), where Lord Penzance in delivering the judgment of the House of Lords lays down certain propositions of law which, he says, cannot be questioned.”

“The first proposition is that the plaintiff in an action for negligence cannot succeed, if it is found by the Jury that he has himself been guilty of any negligence or want of ordinary care which contributed to cause the accident. And as a qualification to this proposition the next proposition laid down is, that although the plaintiff may have been guilty of negligence and although that negligence may in fact have contributed to the accident, yet if the defendant could in the result by the exercise of ordinary care and diligence have avoided the mischief which happened, the plaintiff's negligence will not excuse him.” 13 Bom.L.R. 347 (348). Y

(j) *Wakelin v. The London and South Western Railway Company*, (1866) App. Cas. 41, where Lord Watson, in the course of his judgment lays down the law of negligence in the following words :

“It appears to me that in all such cases the liability of the defendant company must rest upon these facts. In the first place, that there was some negligent act or omission on the part of the Company or their servant which materially contributed to the injury or death complained of, and in the next place that there was no contributory negligence on the part of the injured or deceased person. But it does not, in my opinion, necessarily follow that the whole burden of proof is cast upon the plaintiff. That it lies with the plaintiff to prove the first of these propositions, does not admit of dispute. The mere allegation or proof that the Company were guilty of negligence is altogether irrelevant. They might be guilty of many negligent acts or omissions which might possibly have occasioned an injury to somebody but had no connection whatever with the injury for which redress is sought and therefore the plaintiff must allege and prove not merely that they were negligent but that the negligence caused or materially contributed to his injury.” (*Ibid.*) Z

(2) Gross negligence.

The carrier is protected by S. 1 of the English Carriers Act, 1830, even if there is—*Hinton v. Dibdin*, 2 Q.B. 646. A

Story defines “gross negligence” to be the want of such care as a prudent man would take of his own property (S. 11). Best, J., in *Batson v. Donovan* (4 B. & A. 30) and Dallas, C.J., in *Duff v. Budd* (3 B. & E., 182) give a similar definition, or in other words, the degree of care is similar to, if not the same as, that required to be taken by a bailee by S. 151 of the Indian Contract Act. 32 M. 95 (123). B

(3) Negligence—Liability for injury.

A carrier is liable for injury sustained to goods committed to his care, if he has been guilty of gross negligence. Bourke O.S. 39. C—E

3.—“*Negligence....agents or servants*”—(Continued).(4) **Negligent conduct of servants of carrier.**

- Where, for want of bestowing due care, loss results, it is immaterial whether the negligence be imputable personally to the bailee or to his servants or agents. Per *Lord Campbell in Dansey v. Richardson*, 3 E. and B., 144 (166). F

(5) **Degree of care required.**

The — is not that which the bailee as a fact exercises over his own goods similarly situated with goods bailed to him. See 11 M. 459 (466). G

DEGREE OF CARE REQUIRED BY A CARRIER.

- (a) As to — see 26 C. 398 (P.C.) = 26 L.A. 1 = 3 C.W.N. 145. See, also, 22 A. 361; 9 A. 398; 17 B. 723. H

- (b) On the appellants failing to account for the loss of a large amount of coal entrusted to them, held, that they were liable. 22 M. 524. I

- (c) (i) “The Court has, in dealing with cases under S. 151, Contract Act, to determine what a man of ordinary prudence would have done with his own goods under the circumstances.” See Indian Contract Act, by Cunningham and Shepherd, 8th Ed., p. 338.

- (ii) “It must, therefore take into consideration, the state of society, the ways of life, and danger peculiar to the times, as well as the apparent nature of the subject of the bailment, and the degree of care which it seems to require.” (*Ibid.*)

(6) **Ship-owner not taking precautions—Liability.**

A ship-owner not taking precautions to put down a fire in the ship is guilty of negligence. 3 B. 120; 26 C. 398 (P.C.); 15 C.W.N. 226. J

(7) **Bill of lading—Declaration of value and nature of contents.**

A was the consignee and holder of a bill of lading signed by B at Bombay, as master of the steam-vessel *John Bright*, for the safe carriage and delivery of a box addressed to A, which in fact contained diamonds of the value of Rs. 11,670, three rubies, and three emeralds, in all of the value of Rs. 15,940. On the face of the bill of lading is issued subject to the following conditions. “One condition was that a written declaration of the contents and value of the goods is required by the owner, and must be delivered by the shipper to the owner’s agents with the bills of lading. A wrong description of contents or false declaration of value shall release the owner from all responsibility in case of loss, etc. and the goods shall be charged double freight on the real value, which freight shall be paid previous to delivery.” The declaration in this case was contained in the following letter from the shipper to the agent of the shipowner:—“Dear Sir,—Be good enough to give me an order for a small box containing diamonds of the value of about Rs. 14,000, to be shipped on board the steamer *John Bright* for Calcutta. Yours, etc.” The box was lost by the negligence of B or his servants. In a suit by A to recover “the value of the goods, viz., Rs. 14,000,”—Held that all the shipowner was entitled to, was that the shipper should make a declaration of what *bona fide* he believed to be the value. The declaration as to contents was not vitiated by the omission to enumerate all the different species of

3.—“*Negligence....agents or servants*”—(Continued).

articles contained in the box. Upon the evidence, the declaration as to the value and nature of the contents was *bona fide*; therefore A was entitled to recover the value of the diamonds lost. 2 Ind. Jur. N. S. 305. K

(8) **Contract of carriage—Excepted risks—Construction.**

The Ganges Manufacturing Co. Ltd., had entered into an agreement with a number of Steamer Companies, the defendant carrying company amongst them, to have all their jute carried from certain ports by one or other of the Steamer Companies for a term of five years. Cl. 10 of the agreement provided that the “jute company undertakes to hold the Steamer Companies harmless and indemnified from and against all claims which can be insured against and covered by an ordinary F. P.A. Policy, that is to say, against claims for actual or constructive total loss only of the goods insured, and not against claims for partial loss and damage unless the vessel be stranded, sunk or burnt and the Steamer Companies agree that they shall have no right to claim on the cargo for general average.” A consignment of 1,000 bales of jute was shipped by one G.R. Chakravarty on the defendants Company’s flat “Lemro” for delivery at the Jute Company’s Mill, the bill of lading being endorsed to the said Jute Company, it being stated on the back thereof, amongst other conditions, that “the company will not be liable for the loss of or damage to any property delivered to them to be carried, unless such loss or damage shall have arisen from the negligence or criminal act of their servants or agents:”

Held, on a construction of the agreement, that the exemption of cl. 10 did not extend to loss arising from the negligence or criminal acts of the carrying company. 15 C.W.N. 226—38 C. 28=9 Ind. Cas 364. L

(9) **Carriers’ Act (III of 1865), Ss. 3, 8 and 9—Through booking of goods by steamer and rail—Liability of Steamer Company for loss during transmission by rail—Railways Act (IX of 1890), S. 75.**

The plaintiffs consigned a parcel of silk articles through the India General Steam Navigation and Railway Company, Ltd., for delivery at Khagra knowing that the articles would be carried in the first instance by the defendant company, then by the Eastern Bengal State Railway and then by the East India Railway Company. They did not declare the value of the articles which exceeded Rs. 100 nor disclose the contents of the parcel. It was found that the goods were lost after they had been made over to the Eastern Bengal State Railway.

Held—That the agreement was in substance with both the Steam Navigation Company and the Railway Companies and the former could not be held responsible for the loss. 11 C.W.N. 1076. See, also, 11 C.W.N. 1071. M

“In this view I am supported by high authority in the Courts in England.” (*Ibid.*) N

In the case of *Le Conteur v. The London and South Western Railway Company* [L.R. 1 Q. B. 54 (1865)] which followed the case of *Pianciani v. The London and South Western Railway Company*, 18 C.B. 226 (1856), Cockburn, C.J., laid down the law as follows :

3.—“Negligence....agents or servants” —(Concluded).

“Now it cannot be disputed that the article in question was an article that came within the provisions of the Carriers’ Act; but it was said that the provisions of the Act were not applicable to the case because the contract was one to carry not only to the terminus of the Railway by land, but also by water: and that such a contract being to carry both by land and by water, the contract was not divisible; and, therefore, although the article was lost on land, that it was not within the terms of the Carriers’ Act. I think that that argument fails both on principle and on authority because the point was directly before the Court of Common Pleas in the case of *Pianciani v. The London and South Western Railway Company* (see *supra*), in which the Court expressed the strongest opinion that the contract was divisible; and that so far as the carriage by land was concerned, the Carriers’ Act would afford a protection and defence to the company in the event of the terms of that Act not being complied with, and I must say I entirely concur in the view so taken and expressed by the Court. It would be a matter of most serious inconvenience if companies established for the purpose of conveying goods by land, but having one of the termini of their Railway connected with water communication, should be prevented (as they would practically be) from affording the public the great accommodation which arises from being able to send goods to the ultimate place of destination, the water carriage included, without the necessity of separate contracts with separate companies. If that accommodation were withdrawn from the public, as it might be, so far as the land carriage is concerned, companies were deprived of the protection the Act of Parliament affords, it would be a matter of very serious inconvenience and damage to the public; and I see no reason why that damage and inconvenience should be inflicted upon the public, at the same time that loss would accrue to the companies from not having the opportunity which they at present possess of making the entire contract. I see no reason why the contract should not be held to be divisible, and the carrier protected so far as the land carriage is concerned by the Act of Parliament.” (*Ibid.*) O

9. In any suit brought against a common carrier for the loss, damage

Plaintiffs in suits for loss, damages, or non-delivery not required to prove negligence or criminal act.

or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents ¹.

(Notes).

[See notes under Ss. 6 and 8, *supra*.]

P

Reason for amendment of S. 9 of the Bill.

The other amendment was in S. 9 of the Bill and was not absolutely required, but was adopted for the sake of clearness. It provided that, when a customer was suing a common carrier, the customer should only be bound to prove a contract or delivery and the non-delivery of the goods at their destination and then it would be for the carrier to prove that the loss or damage took place under such circumstances as would relieve the carrier from responsibility. (See Proceedings of the Council.) Q

I.—“*In any suit....agents.*”

(1) Section in accordance with English Law.

This is in accordance with English common Law. See *Ross v. Hill*, 2 Com. B. 890; *Richards v. London, Brighton & S. C. Ry. Co.*, 7 Com. B. 839.R

(2) Section explained.

S. 9 of the Carriers' Act provides “that in any suit brought against a common carrier for the loss, damage, or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage, or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.” 24 C. 786 (822).S

In other words, the loss of the goods is *prima facie* evidence of the negligence or criminal act of the carrier, his servants or agents, and, therefore, if the carrier seeks to exempt himself from liability, he must negative such *prima facie* evidence, that is to say, he must prove that the loss was or must have been occasioned otherwise than by the negligence or criminal act of himself, his servants or agents. (*Ibid.*) T

(3) Proof of negligence.

Ordinarily, upon a loss, damage, or non-delivery, the burden of proof is on the carrier to show that he exercised exact diligence. Story on B. 574.T-1

By S. 9 Act III of 1865 the plaintiff need not prove that loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents; but nothing is said as to the rule where the loss was owing to some other causes for which the carrier is liable. See Collett on Torts. U

(4) Carriers—Suit for damages for negligence—*Onus probandi*.

(a) In an action to recover damages for injury caused to the goods by the negligence of the defendant as a common carrier it is not necessary for the plaintiff to give evidence of such negligence unless the defendant has shown that the injury was occasioned by a cause which was within the exceptions. Then the plaintiff would be at liberty to show that there was negligence so as to deprive the defendant of the benefit of the exceptions. 22 W.R. 39. Y

(b) In a suit for damages occasioned by a loss of goods delivered to a carrier, the plaintiff need not prove how the loss was caused, but on proof of the loss, the company is bound to show that the loss occurred under circumstances which would exempt a bailee from responsibility for it. 17 M. 445. W

(c) In a suit against a carrier by a person who has given an indemnity note to free the company of “all responsibility for any loss or damage whatever arising under certain circumstances,” it is for the defendant to show that the loss of the goods did not occur through the negligence or misconduct of their servants, and that it is covered by the terms of the note. Appeal No. 92, 26th April, 1879, D.C.B., part. X (31).X

(d) If goods bailed have been lost, it lies on the bailees to show that they have taken as much care of the goods as a man of ordinary prudence would, and under similar circumstances, have taken of his own goods of a similar kind, and that the loss occurred notwithstanding such care. If the bailee fails to satisfy the Court on this point he is liable for the loss. 22 M. 524. Y

(e) A Railway Company is not, like a common carrier, liable for not carrying safely. It is liable only for culpable negligence. In actions for damages for negligence against a Railway Company the *onus* is on

1.—“*In any suit....agents*”—(Concluded).

the plaintiff to prove negligence on the part of the Railway Company.
5 and 6 M.L.J. 156. Z

- (f) The flat carrying jute having caught fire so that it had to be scuttled, under S. 9 of the Carriers' Act, it was held (in the absence of evidence to the contrary), that the loss was due to the negligence or criminal act of the carrying company or its agents or servants. 15 C.W.N. 226. A

10. No suit shall be instituted against a common carrier for the loss

Notice of loss or
injury to be given
within six months.

of, or injury to goods entrusted to him for carriage,
unless notice¹ in writing of the loss or injury has been
given to him before the institution of the suit and
within six months of the time when the loss or injury

first came to the knowledge of the plaintiff. ~

(Notes).

Legislative changes.

S. 10 was added by the Indian Carriers Act, 1899 (X of 1899), S. 12. The original section was repealed by the Indian Railways Act, 1890 (IX of 1890). That section was as follows :

“Nothing in this Act shall affect the provisions contained in the ninth, tenth, and eleventh sections of Act No. XVIII of 1854 (relating to Railways in India).”

1.—“*Notice.*”

(1) Service of notice.

“In the Carriers Act there is no direction analogous to be found in S. 140 of the Railways Act as to how the notice specified in S. 10 is to be served. In the absence of any statutory provision regulating the service of notice under S. 10, such service is properly^a made on the company by a letter delivered to its managing agents addressed to them as such.”
15 C.W.N. 230. B

(2) Steamship Company and Railway Company—Notice before suit.

S. 10 of the Common Carriers' Act as amended by Act X of 1899 placed a Steamship Company in the same position as a Railway, and make it obligatory upon a person wanting to sue a Steamer Company to give notice of such suit within the time mentioned in the section. 8 C.L.J. 192. C

(MISCELLANEOUS).

LIMITATION OF SUITS AGAINST CARRIER.

1.—Art. 30, Limitation Act (IX of 1908).

Description of suit.	Period of limitation.	Time from which period begins to run.
Against a carrier for compensation for losing or injuring goods.	One year.	When the loss or injury occurs.

N.B.—The limitation was reduced from two years to one by Act X of 1899, S. 3, which came into force on the 1st May, 1899.

(MISCELLANEOUS)—(Continued).

I.—Art. 30, Limitation Act (IX of 1908)—(Concluded).

(1) Scope of article 30.

(a) Art. 30 of Act XV of 1877 (= Art. 30, Act IX of 1908) applies only to suits for compensation for loss of, or damage to, goods arising from malfeasance or non-feasance independent of contract. 3 M. 107 (110). D

(b) Act X of 1899 provides that "no suits shall be instituted against a common carrier for the loss of, or injury to, goods entrusted to him for carriage, unless the notice in writing of the loss or injury has been given to him before the institution of suit, and within six months of the time when the loss or injury first came to the knowledge of the plaintiff." S. 2, Act X of 1899. E

(2) Carriers by sea.

— are within the purview of Art. 30 of Act XV of 1877 even though they are not 'common carriers' for the purposes of the Indian Carriers' Act (III of 1865), the operation of which is confined to inland carriers. 3 M. 107; 26 B. 562 (570) = 4 Bom. L.R. 447. F

(3) Date of loss—Burden of proof.

(a) The mere fact of non-delivery of the goods on a certain date would not give rise to the presumption that the loss occurred on that date. 7 B. 478. G

(b) To have the benefit of Art. 30 of Act XV of 1877 the carrier has to prove the actual date of the loss, provided the plaintiff has given *prima facie* evidence that his suit is not beyond the period of limitation prescribed. (*Ibid.*) H

II.—Art. 31, Limitation Act (IX of 1908).

Description of suit.	Period of limitation.	Time from which period begins to run.
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Against a carrier for compensation for non-delivery of or delay in, delivering goods.	One year.	When the goods ought to be delivered.
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N.B.—(1) The limitation was reduced from two years to one by Act X of 1899, S. 3, which came into force on the 1st May, 1899.

(2) The words "non-delivery of" introduced by Act X of 1899 have settled the controversy on the point. For conflict of opinions prior to 1899, see 3 M. 107 and 240; 5 M. 388; 7 B. 478; 19 B. 165 and 12 C. 477. I

(1) Suit for non-delivery of goods.

A suit for damages for non-delivery of goods is governed by Art. 31 and not by Art. 115, Limitation Act, because such a case is specially provided by Art. 31. 26 B. 562 = 4 Bom. L.R. 447. J

In the course of the judgment in the above case, Fulton, J. said—"We entirely agree in the reasoning of Bayley, C.J., in 19 B. 165 and hold that the Legislature having now re-enacted by Act X of 1899, Art. 31, in a form rather more comprehensive than before, there can be no reason for not

(MISCELLANEOUS)—(*Concluded*).II.—Art. 31, Limitation Act (IX of 1908)—(*Concluded*).

giving effect to what appears to be the manifest provisions of the law. Had this amendment been made at the time we think it probable that the difficulties felt by Justice Ferran as to the effect of Art. 30 would not have arisen. It is clear that this is a suit against a carrier for compensation. Art. 31, therefore applies and not Art. 115 which only applies to suits for compensation for breaches of contract not in writing registered and not specifically provided for in the Act. K

(2) Limitation Act (XV of 1877), Sch. II, Art. 31, as amended by Act X of 1899, S. 3—Carrier—Failure to deliver goods—Suit for compensation—Limitation.

A suit against a carrier for compensation in respect of goods sent through such carrier and not delivered is governed by Art. 31 of Sch. II of the Limitation Act as amended by S. 3 of Act X of 1899, and not by Art 115. 18 C.W.N. 851. K-1

SCHEDULE 1.

Gold and Silver coin.

Gold and silver in a manufactured or unmanufactured state.

Precious stones and pearls.

² Jewellery.

Time-pieces of any description ³.

⁴ Trinkets.

Bills and hundis.

Currency notes ⁵ of the Government of India, or notes of any Banks, or securities for payment of money, English or Foreign.

Stamps and stamped paper.

Maps ⁶, prints, and works of art.

Writings.

Title-deeds.

Gold or silver plate or plated articles.

Glass ⁷.

China.

⁸ Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.

Shawls and lace ⁹.

Cloths and tissues embroidered with the precious metals or of which such metals form part ¹⁰.

Articles of ivory, ebony or sandalwood ¹⁰.

(Notes).

1.—“Schedule.”

Schedule to Carriers' Act—What it contains?

The schedule to the Act contains a list of articles of large value in small compass, corresponding with the list contained in the English Carriers' Act. 18 Cal. 620 (626). L

2.—“Jewellery.”

Jewellery—Scope of the term.

**Semble*.—“The term jewellery includes the jewel case in which the jewellery is contained”. For *Martin B. Henderson v. L. and N. W. Ry., Co.*, L.R. 5 Ex. 90. M

3.—“Time-pieces of any description.”

Chronometer.

A—comes within the expression “time-pieces of any description.” *Le Conteur v. L. and S.W.Ry.*, 35 L.J. Q.B. 40. N

4.—“Trinkets.”

Trinkets.

(a) Ivory, black and agate bracelets, shirt-pins, common gilt rings, broaches, tortoise shell and pearl purses, gold-chains for eye glass are—*Bernstein v. Buxendale*, 6 C.B. (N.S.) 251. O

(b) But German Silver fuzee boxes are not. (*Ibid.*) P

5.—“Currency Notes.”

Currency notes, what are.

This clause covers—. Currency notes are promises to pay, made by a person on behalf of the Government of India, although they are not included in the definition of promissory note in S. 4, Negotiable Instruments Act, for the purposes of that Act. 73 P.R. 1907. Q

6.—“Maps.”

Maps.

With their cases are included in the term—*Wyld v. Pickford*, 8 M. and W. 443. R

7.—“Glass.”

Glass.

(a) — Smelling bottles and flacons are “glass.” *Bernstein v. Buxendale*, 6 C.B. (N.S.) 251. S

(b) So also looking glasses. *Owen v. Burnett*, 2 Cr. and M. 353. T

8.—“Silks in . . . materials.”

(1) Silk in manufactured state, etc., application of the terms.

The terms “silk in a manufactured state, etc.,” in the schedule were not intended to apply to any cloths in which silk may be introduced. Where there is a large value of silk than cotton in the article it may be held to fall within the above description of “silks, etc.” 6 M. 420. U

(2) “Silk.”

• (a) Silk watch guards are silk. *Bernstein v. Buxendale*, 6 C.B. (N.S.) 251. Y

(b) So also silk dresses. *Flowers v. S. E. Ry. Co.*, 16 L.T. N.S. 329. W

(c) So also silk tights and hose. *Hart v. Buxendale*, 6 Ex. 769. X

• (d) Likewise an elastic silk webbing. *Brunt v. Mulland Ry. Co.*, 2 H and C. 889 cited in 6 M. 420 (422). Y

(e) A web known in the trade as silk web having a silk face and composed in the proportion of 10 oz. of silk to 1½ oz. of India rubber and ¾ oz. of

8.—“*Silks in . . . materials*”—(Concluded).

Cotton, with relative values of 12 d 13½ d (silk) to 7½ d (India rubber and 3½ d (cotton) was held to be silk within the meaning of the Act. *Brunt v. Midland Ry. Co.*, 2 H.L.C. 889, cited in 6 M. 420 (422) Z

(3) Silk dhotee, value of silk—Evidence, question.

- (a) Whether certain cotton or other cloths woven up with silk on the borders or otherwise were “silk” within S. 3 of the Act was held to be a question of fact to be decided on the evidence in each case. See 4 B.H.C. R. 129. A
- (b) *Semble*.—The proper test for a Judge to apply in such cases is to determine whether or not the value of silk wrought up with other materials is more than half the value of the fabric. If it be not, the fabric cannot be considered to be silk within the meaning of the Act. (*Ibid.*) B

(4) Liability for lost articles—Uninsured goods.

The protection given by S. 3 of the Act extends to the whole parcel in which silk goods, such as mentioned in the schedule are contained, whether the rest of the parcel is composed of articles mentioned in the schedule. See 11 Bom. L. R. 827. C

9—“*Lace*.”

Lace vestment.

A—is a lace. *Treadwin v. C. E. Ry.*, 37 L.J.C.P. 83. D

10—“*Cloths . . . sandalwood*.”

Reason for the insertion of these articles.

The Hon'ble Raja Sahib Dyal Bahadur proposed the addition of the following words to the third section : and the carrier or his agent shall thereupon himself personally have such property examined or if that be impossible shall have it inspected and the seal affixed to the box or parcel in which such property is contained, and shall, on delivery thereof, show such seal to be in tact.

The custom now prevailing in the country was that jewels and similar valuable property were either shown to the insurer when delivered over to him and by him when he delivered them over in his turn, or that the seal was affixed to the box in which such valuables were contained, was pointed out to him, and was by him shown to the party receiving delivery from him to be intact. For instance, shawls and such valuable cloths were either packed in the presence of the insurer, or, if given over to him already packed, were sealed, in which case, the Raja said, the seals remaining in tact absolved the insurer from responsibility.

The Hon'ble Mr. Maine thought that the Hon'ble Member had overlooked the fact that the particular section referred to was one protecting the carrier, and enabling him to compensate himself for increased risk by an enhanced rate of charge. A fraudulent declaration of value under the section by the consignor would in no way bind the carrier.

The Hon'ble the Maharaja of Vizianagram moved as an amendment the words “cloths and tissues embroidered with the precious metals or of which such metals formed part and Articles of ivory, ebony or sandalwood” should be added to the schedule. The amendment was agreed to. [See Proceedings of the Council.] E

THE CARRIERS ACT, 1865.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S. in Brevier Roman denotes the section.

Act, Carriers—Preamble, **6**.

„ Statement of objects and reasons, *A, B*, **6**.

„ Proceedings relating to the Bill, *C*, **6**.

„ Places where Act has been declared to be in force, *D, E*, **6, 7**.

„ Legislative changes, *G*, **7**.

„ Preserved in tact, *H*, **8**.

„ Scope of the Act, *K*, **8**.

Short title, *S. 1*, **18**.

Articles which must be declared under the Indian, *N*, **22**.

Act XXII of 1863, In respect of what property, liability of carrier not limited or affected by public notice carriers with certain exceptions may limit liability by special contract, *S. 6*, **27—33**.

Liability of owner of railroad or tramroad constructed under, not limited by special contract. In what case owner of railroad or tramroad answerable for loss or damage, *S. 7*, **33**.

Act XIV of 1866, Post Office, Bailee for hire—Negligence—Condition—Carrier—Conveyance of goods by Government bullock train, *L*, **20**.

Act IX of 1890, Railways, *S. 75*, through booking of goods by steamer and rail—Liability of Steamer Company for loss during transmission by rail, *H, I*, **24, 25**; *M, O*, **41, 42**.

Agent, signing special contract—Reason for alterations made, *U*, **27, 28**.

Common carrier liable for loss or damage caused by neglect or fraud of himself or his, *S. 8*, **33—42**.

Agreement, with jute Company, *Q*, **32**.

Ambiguous expression, Construction of, *U—X*, **36**.

Articles, within *S. 1* of the English Carriers Act, 1830, *X—II*, **22**.

not within *S. 1* of the English Carriers Act, 1830, *I—M*, **22**.

which must be declared under the Indian Act, *N*, **22**.

Valuable, not declared—Liability—Protection, *Z, A*, **24**.

Loss of valuable, English and Indian laws similar, *N—I'*, **26**.

Liability for lost,—Uninsured goods, *C*, **48**.

Bailee, and common carriers—Distinction—Liability, *L*, **8**.

for hire—Negligence—Onus of proof—Carrier—Daka carriage proprietor, *F*, **19, 20**.

for hire—Negligence—Condition—Carriers—Conveyance of goods by Government bullock train—Post Office Act, XIV of 1866, *L*, **20**.

- Bill of lading*, Stipulation relieving shipowners from liability as soon as goods are free of ship's tackle, and before delivery, if enforceable—Loss of goods after delivery to landing agent but before delivery to consignee, *H, I, 30, 31.* •
- Construction—River—Navigation in India—Difficulties or casualties of navigation, *J, 31.*
- Provisions as to exemption from liability, effect of—Liability of, for negligence and damage to goods, *M—P, 32.*
- Declaration of value and nature of contents, *K, 40, 41.*
- Burden of proof*, Carriers—Suit for damages for negligence, *V—X, 43, 44.*
- Date of loss, *G, H, 45.*

C

Carriers, [See also COMMON CARRIERS].

- Common carriers—Liability—Twofold risk of, *M, 9, 10.*
- Misdelivery, *X, Y, 15.*
- When non-delivery is excused, *Z, A, 15.*
- Action for non-delivery of goods, *B, 15.*
- Carrier contracts with owner of goods, *C, 15.*
- Who must sue under the contract to carry, *D—F, 15.*
- Contract—Want of privity—Two companies—Less remedy, *H, 15.*
- Conveyance of goods by Government bullock train—Post Office Act, XIV of 1866—Bailees for hire—Negligence—Condition, *L, 20.*
- S. 1, English Carrier's Act, 1830, Will. IV, c. 687, *O, 23.*
- If value declared, liable, *D, G, 24.*
- Absence of special contract, liability of cases, *E, 30.*
- Reasonable condition—Common carrier—Liability, *F, G, 30.*
- by sea, *F, 45.*
- Failure to deliver goods—Suit for compensation—Limitation—Limitation Act XV of 1877, Sch. II, Art. 31, as amended by Act X of 1899, S. 3, *46.*
- Chronometer*, means what, *N, 47.*
- Common carriers*, Law applicable to,—Contract Act (IX of 1872), *I, 8.*
- Contract Act not applicable—Reasons—S. 152, Contract Act (IX of 1872), *J, 8.*
- Bailee and,—Distinction—Liability, *L, 8.*
- Liability—Twofold risk of carriers, *M, 9, 10.*
- Liability of, *N, 10.*
- Duties and responsibilities of,—English law, *O, 10, 11.*
- Obligation to carry, *P, 11.*
- Delivery to, *Q, 11.*
- Delivery of article, *R, 11.*
- Liability of, attaches, when, *S, 11.*
- Liability begins when, *T, 11.*
- Liability ends, when, *U, 12.*
- Liability under a contract to carry, *V, 12.*
- Proper address to be given, *W, 12.*
- Route to be taken by the, *X, 12.*
- not entitled to know contents, *Y, 12.*
- Defect inherent—Liability, *Z, A, 12.*
- Fragile goods, *B, C, 12, 13.*
- Misdescription—Loss goods, *D, 13.*
- Non-liability as, *E, 13.*
- Consignee's claim—Carrier's liability, *F, 13.*
- Consignee's delay in taking delivery, *G, 13.*
- Delivery of goods to carrier at consignor's risk—Delivery to consignee, *I, 13.*

Common carriers—(Concluded).

- Duty in case of absence, etc., of consignee, *K, L, 14.*
- Refusal of the consignee to take delivery of the goods, *M, N, 14.*
- Consignee's refusal to pay charges—Detention of parcel, *O, P, 14.*
- Time of delivery, *Q—T, 14.*
- Amount of time allowed to the consignee to unload and remove his goods, *U, 14.*
- no insurer against all risks, *K, 16.*
- Nature of the obligation of, to carry goods, with safety, *L—R, 16, 17.*
- Duties and liabilities regulated by principles of English law, *S, 17.*
- defined, *S, 2, 18.*
- Who is a, *U—Y, 18, 19.*
- Explained, *T, 18.*
- who is, *U—Y, 18, 19.*
- Common ferrymen is a, *Z—B, 19.*
- Owners of sea-going merchantships, *C, 19.*
- Owners of a fleet of steam-ships flying periodically along the coasts of British India, *D, 19.*
- Carriers by sea from port to port whether, *E, 19.*
- Daka-carriage proprietor—Bailee for hire—Negligence—Onus of proof, *F, 19.*
- Carriers, not to be liable for loss of certain goods above one hundred rupees in value unless delivered as such, S. 3, 21—26.*
- Valuable article not declared—Liability—Protection, *Z, A, 24.*
- For carrying such property, payment may be required at rates fixed by, *S. 4, 26, 27.*
- Waiver of declaration, *S. 27.*
- The person entitled to recover in respect of property lost may also recover money paid for its carriage, *S. 5, 27.*
- In respect of what property, liability of, not limited or affected by public notice, with certain exceptions may limit liability by special contract, *S. 6, 27—33.*
- Law prior to 1865, *V, 28.*
- Combined effect of Ss. 6 and 8 of the Act—Duties and liabilities of, governed by principles of English Common Law recognized in Carriers Act, *D, 29.*
- Liability—Reasonable condition, *F, G, 30.*
- Construction—River—Navigation in India—Difficulties or casualties of navigation, *J, 31.*
- Foreign—Carriers—Applicability of law *lex loco contractus*—Common law of England—Contract protecting carriers from liability—Legality, *K, 31.*
- Liability of, for negligence and damage to goods—Bill of lading—Provisions as to exemption from liability, effect of, *M—P, 32.*
- liable for loss or damage caused by neglect or fraud of himself or his agent, *S. 8, 33—42.*
- Gross negligence, definition, *A, B, 39.*
- Negligence—Liability for injury, *C, 39.*
- Negligent conduct of servants of, *F, 40.*
- Degree of care required, *G—I, 40.*
- Contract of carriage—Excepted risks—Construction of agreement, *L, 41.*
- Plaintiffs in suits for loss, damages or non-delivery not required to prove negligence or Criminal Act, *S. 9, 42—44.*
- Suit for damages for negligence—Burden of proof, *V—X, 43, 44.*
- Notice of loss or injury to be given within six months, *S. 10, 44—46.*
- Compensation, Suit for—Limitation—Limitation Act XV of 1877, Sch. II, Art. 31, as amended by Act X of 1899, S. 3—Carrier—Failure to deliver goods, K—I, 46.*

Consignee, Consignee's claim—Carrier's liability, *F*, 13.

—'s delay in taking delivery, *G*, 13.

Duty in case of absence, etc., of, *K*, *L*, 14.

Refusal of the, to take delivery of the goods, *M*, *N*, 14.

—'s refusal to pay carrier's charges—Detention of parcel, *O*, *P*, 14.

Consignment, under receipt note not signed by consignor, *H*, 13.

Consignor, Consignment under receipt note not signed by, *H*, 13.

Delivery of goods to carrier at Consignor's risk—Delivery to consignee—Carriers, *I*, 13.

Omissions of, to declare value and description of goods—Contract to carry partly by steamer and partly by rail, *I*, *J*, 16.

Construction, of ambiguous expression, *U*—*X*, 36.

of agreement—Contract of carriage—Excepted risks, *L*, 41.

Contract, Want of privity—Carrier—Two companies—Less remedy, *H*, 15.

In respect of what property, liability of carriers not limited or affected by public notice. Carriers with certain exceptions may limit liability by special, *S*, 6, 27—33.

Reason for alterations made—Agent signing special, *U*, 27, 28.

Liability limited by special,—Ss. 6 and 8—English and Indian law, *Y*—*C*, 28, 29.

Absence of special, liability of carrier, *E*, 30.

protecting carriers from liability—Legality—Carriers—Foreign carriers—Applicability of law *Lex loco contractus*—Common law of England, *K*, 31.

Liability of owner of railroad or tramroad constructed under Act XXII of 1863, not limited by special contract. In what case owner of railroad or tramroad answerable for loss or damage, *S*, 7, 33.

Damage for breach of, to carry goods—Notice, *C*, *D*, 37.

of carriage—Excepted risks—Construction of agreement, *L*, 41.

Contract Act (IX of 1872), Law applicable to common carriers, *I*, 8.

S. 152—Common carriers—Contract Act not applicable—Reasons, *J*, 8.

Contract to carry, Liability under a, *V*, 12.

Who must sue under the, *D*—*F*, 15.

partly by steamer and partly by rail—Omission of consignor to declare value and description of goods, *I*, *J*, 16.

Criminal Act, Plaintiffs in suits for loss, damages or non-delivery not required to prove negligence or, *S*, 9, 42—44.

Currency notes, what are, *Q*, 47.

D

Damage, Liability for, to goods—Negligence, *J*, 13, 14.

The person entitled to recover in respect of property lost may also recover money paid for its carriage, *S*, 5, 27.

Liability of, for negligence and, to goods—Bill of lading—Provisions as to exemption from liability, effect of, *M*—*P*, 32.

Liability of owner of railroad or tramroad constructed under Act XXII of 1863, not limited by special contract. In what case owner of railroad or tramroad answerable for loss or, *S*, 7, 33.

Common carrier liable for, caused by neglect or fraud of himself or his agent, *S*, 8, 33—42.

for breach of contract to carry goods—Notice, *C*, *D*, 37.

When special, can be recovered, *E*, 37.

Special damage when not recoverable, *F*, *G*, 37.

Loss of contract, *H*, 37.

Damage—(Concluded).

Action for loss of goods—Damages, *K*, 37.

Plaintiffs in suits for loss or non-delivery not required to prove negligence or Criminal Act, *S*, 9, 42—44.

Suit for, for negligence—Burden of proof—Carriers, *V*—*X*, 43, 44.

Declaration, of value necessary, *Q*, *R*, 23.

of valuable goods, essentials of, *S*—*X*, 23.

Omission to declare value and nature of goods, effect of, *Y*, 23.

Article not declared—Liability—Protection, *Z*, *A*, 24.

If value declared carrier liable, *D*—*G*, 24.

Omission to demand extra charge for valuation, *Q*, *R*, 26.

Waiver of, *S*, 27.

of value and nature of contents—Bill of lading, *K*, 40, 41.

Definition, of "person", *M*, 20.

Delivery, Consignee's delay in taking, *G*, 13.

of goods to carrier at consignor's risk, to consignee—Carriers, *I*, 13.

Time of, *Q*—*T*, 14.

Amount of time allowed to the consignee to unload and remove his goods, *U*, 14.

Place for, *V*, *W*, 14, 15.

E

English Carriers Act (1830), Principle embodied in, extended in *S*. 3 of this Act, *N*, 21.

Articles within *S*. 1 of the, *X*—*H*, 22.

Articles not within *S*. 1 of the, *I*—*M*, 22.

S. 1, *O*, 23.

S. 6 of the, and the present section, *W*, *X*, 28.

S. 8 and *S*. 8, Act III of 1863 compared—Steamship Companies—English and Indian Law, *T*, 33—36.

English Common Law, Combined effect of *Ss*. 6 and 8 of the Act—Duties and liabilities of common carrier governed by principles of, recognized in Carriers Act,

D, 29, 30.

F

Foreign carriers, Applicability of law *lex loci contractus*—Common law of England—Contract protecting carriers from liability—Legality, *K*, 31.

G

Glass, Instances, *S*, *T*, 47.

Goods, Carriers—Misdescription—Loss, *D*, 13.

Delivery of, to carrier at consignor's risk—Delivery to consignee—Carriers, *I*, 13.

Liability for damage to,—Negligence, *J*, 13, 14.

Action for non-delivery of, *B*, 15.

Carrier contracts with owner of, *C*, 15.

sent on approval—Consignor to sue, *G*, 15.

Nature of the obligation of common carriers to carry, with safety, *L*—*R*, 16, 17.

Carriers not to be liable for loss of certain goods above one hundred rupees in value unless delivered as such, *S*, 3, 21—26.

Formal notice of nature of, not necessary, *P*, 23.

Declaration of valuable—essentials of, *S*—*X*, 23.

Omission to, declare value and nature of, effect of, *Y*, 23.

Uninsured, *B*, 24.

Uninsured—Theft by Company's servants, *C*, 24.

Through booking of, by steamer and rail—Liability of Steamer Company for loss during transmission by rail—Railways Act, IX of 1890, *S*. 75, *H*, *I*, 24, 25.

Goods—(Concluded).

Loss of, after delivery to landing agent but before delivery to consignee—Bill of lading—Stipulation relieving shipowners from liability as soon as goods free of ship's tackle, and before delivery, if enforceable, *H, I, 30, 31*.

Liability of, for negligence and damage to,—Bill of lading—Provisions as to exemption from liability, effect of, *M—P, 32*.

Damage for breach of contract to carry—Notice, *C, D, 37*.

Action for loss of goods—Damages, *K—P, 37*.

Suit for non-delivery of, *J, K, 45*.

Liability for lost articles—Uninsured, *C, 48*.

Government, Indian,—Post Master General, *J, K, 20*.

Conveyance of goods by, bullock train—Post Office Act, XIV of 1866—Bailee for hire—Negligence—Condition—Carriers, *L, 20*.

Gross negligence, Defined, *A, B, 39*.

H

Hotel expenses, in waiting for goods, not recoverable, *I, 37*.

J

Jewellery, Scope of the term, *M, 47*.

L

Lace, vestment is lace, *D, 48*.

Limitation Act, XV of 1877, Art. 31, Sch. II as amended by Act X of 1899, S. 3—Carrier—Failure to deliver goods—Suits for compensation—Limitation, *K-I, 46*.

Limitation Act, IX of 1908, Art. 30, *44, 45*.

Art. 30—Scope of, *D, E, 45*.

Carriers by sea, *F, 45*.

Date of loss—Burden of proof, *G—H, 45*.

Art. 31, *45, 46*.

Suit for non-delivery of goods, *J, K, 45*.

Loss, scope of the expression, *O—T, 21*.

Delay from temporary loss, *U, 21*.

Delay, where no, *V, 22*.

of valuable articles—English and Indian laws similar, *N—P, 26*.

by accident—Negligence, *L, 31, 32*.

Liability of owner of railroad or tramroad constructed under Act XXII of 1863 not limited by special contract. In what case owner of railroads, tramroad answerable for, or damage, S. 7, *33*.

Common carrier liable for, caused by neglect or fraud of himself or his agent, S. 8, *33—42*.

Meaning of, *A, B, 37*.

Action for, of goods—Damages, *K, P, 37*.

Plaintiffs in suits for, damages or non-delivery not required to prove negligence or criminal act, S. 9, *42—44*.

Notice of, or injury to be given within six months, S. 10, *44—46*.

M

Maps, include their Cases, *E, 47*.

Misdelivery, *X, Y, 15*.

N

Negligence, Onus of proof—Carrier—Daka-carriage proprietor—Bailee for hire, *F, 19, 20*.

Condition—Carriers—Conveyance of goods by Government bullock-train—Post Office Act XIV of 1866, Bailee for hire, *L, 20*.

Negligence—(Concluded).

Loss by of accident, *L*, 31, 32.

Liability of, for, and damage to goods—Bill of lading—Provisions as to exemption from liability, effect of, *M—P*, 32.

what amounts to, *Q—Z*, 38, 39.

Liability for injury, *C*, 39.

Ship-owner not taking pre-cautions—Liability, *J*, 40.

Plaintiffs in suits for loss, damages or non-delivery not required to prove, or criminal act, *S*, 9, 42—44.

Proof of, *U*, 43.

Suit for damages for,—Burden of proof—Carriers, *V—X*, 43, 44.

Non-delivery, When, is excused, *Z*, *A*, 15.

Action for, of goods, *B*, 15.

Notice, In respect of what property, liability of carrier not limited or affected by public, carriers with certain exceptions may limit liability by special contract, *S*, 6, 27—33.

Damages for breach of contract to carry goods, *C*, *D*, 37.

of loss or injury to be given within six months, *S*, 10, 44—46.

Service of, *B*, 44.

before suit—Steamship Company and Railway Company, *C*, 44.

Number, Includes what, *S*, 2, 18.

P

Person, Includes what, *S*, 2, 18.

Definition of, *M*, 20.

Post Master General, Indian Government, *J*, *K*, 20.

R

Railroad, Liability of owner of or tramroad constructed under Act XXII of 1863 not limited by special contract. In what case owner of, or tramroad answerable for loss or damage, *S*, 7, 33.

Railway Company, not affected, *Y*, *Z*, 36.

Steamship Company and,—Notice before suit, *C*, 44.

Railways, dealt with in exceptional manner—Reason, *G—I*, 20.

S

Schedule, to Carriers Act—What it contains, *L*, 46.

Service, of notice, *B*, 44.

Silk, in manufactured state, etc., application of the terms, *U*, 47.

Instances, *V—Z*, 47, 48.

dhotee; value of,—Evidence, question, *A*, *B*, 48.

Steamship Company, and Railway Company—Notice before suit, *C*, 44.

T

Tramroad, Liability of owner of, constructed under Act XXII of 1863, not limited by special contract. In what case owner of railroad or, answerable for loss or damage, *S*, 7, 33.

Trinket, Insurance, *O*, *P*, 47.

V

Value, Carriers not to be liable for loss of certain goods above one hundred rupees in value unless delivered as such, *S*, 3, 21—26.

Declaration of, necessary, *Q*, *R*, 23.

Value—(Concluded).

Omission to declare, and nature of goods, effect of, *Y*, 23.

If, declared, carrier liable, *D—G*, 24.

Meaning and scope of the term, *J—M*, 25, 26.

For carrying such property, payment may be required at rates fixed by carrier,
S, 4, 26, 27.

Omission to demand extra charge for valuation, *Q, R*, 26.

Declaration of, and nature of contents—Bill of lading, *K*, 40, 41.

W

Waiver, of declaration, *S*, 27.

Words and phrases, Common carrier—Meaning, 18.

“Value” meaning and scope of the term, *J—M*, 25, 26.

THE
MESNE PROFITS & IMPROVEMENTS
ACT.

(ACT XI OF 1855.)

(WITH THE CASE-LAW THEREON)

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THE MESNE PROFITS AND IMPROVEMENTS ACT, 1855 ¹.

(ACT XI OF 1855.)

[Passed on the 27th March, 1855.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1855	XI	Mesne Profits and Improvements.	Rep. in part (locally), Act IV of 1882.

An Act relating to mesne profits and to improvements made by holders under defective titles in cases to which the English Law is applicable.

WHEREAS it is expedient, in cases to which the English law is applicable,
Preamble. *to limit the liability for mesne profits and to secure to bona fide holders under defective titles the value of improvements made by them; It is enacted as follows:—*

(Notes).

• • 1.—“The Mesne Profits and Improvements Act, 1855.”

(1) Short title.

The mesne profits and Improvements Act, 1855. See the Indian short titles Act, 1897 (XIV of 1897). A

(2) Act has been declared to be in force.

The ——— in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), S. 3.

It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874) to be in force in the following Scheduled Districts namely:—

Sindh	...	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpaiguri	...	Do. 1881, Pt. I, p. 74.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, See Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum	...	Do. 1881, Pt. I, p. 504.
The scheduled portion of the Mirzapur District	...	Do. 1879, Pt. I, p. 389.
• Jaunsar Bawar	...	Do. 1879, Pt. I, p. 382.

1.—“ *The Mesne Profits and Improvements Act, 1855* ”—(Concluded).

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan. (Portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the districts of Peshawar and Kohat now form the North-West Frontier Provinces, *see* Gazette of India, 1901, Pt. I, p. 857, and *ibid.*, 1902, Pt. I, p. 575; but its application to that portion of the Hazara District known as Upper Tanawal has been barred by the Hazara (Upper Tanawal) Regulation, 1900 (II of 1900), Punjab and N. W. Code) ...

See Gazette of India, 1886, Pt. I, p. 48.

The Scheduled Districts of the Central Provinces ...

Do. 1879, Pt. I, p. 771.

The Scheduled Districts in Ganjam and Vizagapatam ...

Do. 1898, Pt. I, p. 870.

The District of Sylhet ...

Do. 1879, Pt. I, p. 631.

The rest of Assam (except the North Lushai Hills) ...

Do. 1897, Pt. I, p. 299.

It has been extended, by notification under S. 5 of the last-mentioned Act, to the Scheduled Districts of Kumaon and Garwal. *See* Gazette of India, 1876, Pt. I, p. 606.

It has been declared, by notification under S. 3 (b) of the same Act, not to be in force in the Scheduled District of Lahaul. *See* Gazette of India, 1886, Pt. I, p. 301. **B**

(3) **Legislative Changes.**

The words “to *mesne profits and*” in the Title and “to *limit the liability of mesne profits and*” in the Preamble, together with S. 1, are repealed in places to which Act IV of 1882, extends or is extended. *See* Act IV of 1882, Sec. 2. **C**

1. No person shall be chargeable with any rents or profits of any immoveable property which he has *bona fide* paid over to any person of whom he *bona fide* held the same, notwithstanding it may afterwards appear that the person to whom such payment was made had no right to receive such rents or profits.

No person chargeable with rent *bona fide* paid to holder under defective title¹.

(Notes).

General.

(1) **Analogous Indian Law.**

(a) This section is almost word for word the same as S. 50 Transfer of Property Act, 1882. That section runs thus:— **D**

50. No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Rent *bona fide* paid to holder under defective title.

General— (Concluded).

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

(b) Compare also S. 109, para 2 and S. 180 proviso of the Transfer of Property Act, 1882.

(c) It corresponds to S. 148 of the N.W.P. Rent Act.

E

(2) Analogous English Law.

This section is drawn up in conformity with the Statute of Anne, 4 Anne C. 16 S. 10 which similarly protects tenants in England. Sections 9 and 10 of this statute run thus :—

“ 9. From and after the first day of Trinity Term (1705) all grants or conveyances thereafter to be made, by fine or otherwise, of any manors or reals, or of the reversion or remainder of any messuages or lands shall be good and effectual to all intents and purposes without any attornment of the tenants or such manors or of the land out of which such rent shall be issuing, or of the particular tenants upon whose particular estates any such reversions or remainders shall and may be expectant or depending as if their attornment had been had and made.”

“ 10. Provided, nevertheless that no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor or conusor, or by breach of any condition for non-payment of rent, before notice shall be given to him of such grant by the conusee or grantee.”

F

(3) Legislative changes.

S. 1 is repealed in places to which the Transfer of Property Act extends or is extended. See Act IV of 1882, S. 2.

G

I.—“ No person . . . defective title.”

(1) Principle.

The rule here enacted depends upon a rule of general jurisprudence, that if a person enters into a contract, and, without notice of an assignment, fulfils it to the person with whom he made the contract, he is discharged from his obligation. Here the same rule has been enacted, and express provision made, for the protection of the tenant, who *bona fide* pays rent to his landlord, having no notice of the transfer, or of some flaw in his title. 23 C. 87 (101) (F.B.).

H

A tenant is not bound to canvas his landlord's title more than is necessary for his purpose. Indeed, any attempt to probe into secret flaws in his landlord's title would in most cases have the effect of quickly determining his own tenancy. He is, therefore, protected from being again made liable for rent if already paid by him to his ostensible landlord. But it does not give to the payee the right to retain money so paid, or debar the person entitled to the money from recovering it from him. 23 C. 87 (101) (F.B.).

I

(2) Section wider than the English Statute.

While the English Statute 4 Anne C. 16, S. 10 refers only to “rents,” this section refers both to “rents and profits” and is thus wider in its operation than the Statute. The rule here enacted has a wider application than its English prototype which is limited to cases

I.—“ No person . . . defective title ”—(Continued).

arising only as between landlord and tenant, whereas the principle here enunciated may equally well apply to co-sharers and, indeed to any case in which profits may become realizable.

The rule, again, is not only limited to cases arising on transfer, for the section is more general in its wording, and enunciates what may be regarded as a general equitable maxim, relating to the enjoyment of property. The question may be looked at from the different aspects in which it may represent itself, *viz.*,

- (a) in cases between landlord and tenant, protecting the latter from having to pay his rent twice over ;
- (b) in cases arising on a transfer of property ;
- (c) its application to realization of profits by a person in possession. J

I.—Protection as to rent.**(1) Payment of rent in advance.**

As regards protection as to rent it is sufficient to say that while the tenant is protected against having to pay his rent twice over if he had paid it in good faith to his grantor, it is also clear that if he has paid rent before it fell due, it could not be in fulfilment of the obligation imposed by the covenant to pay rent, but is looked upon in the shape of an advance made to the landlord, with an agreement that on the day when the rent becomes due such advance shall be treated as a fulfilment of the obligation to pay rent. If, therefore, before that day, the landlord assigned the reversion, the receipt of the rent could not be treated as a discharge by the landlord, because by assigning the reversion before the rent fell due, he had parted with the power of giving such a discharge. *De Nicholls v. Saunders*, L.R. 5 C.P. 589 (594) ; 14 C.P.L.R. 65 (66). K

(2) Good plea against landlord and his legal representative.

As against the landlord and his legal personal representatives a tenant who pays rent in advance is secure because, as the rent becomes due, the previous advance becomes actual payment. 14 C.P.L.R. 65 (66). L

(3) Assignee not bound by payment in advance.

But if the landlord should assign his rights, the assignee will, by giving notice to the tenant before the proper rent-day to pay rent to him, become entitled to the rent then falling due. *Ibid.*, citing *De Nicols v. Saunders*, 39 L.J.C.P. 297 ; *Cook v. Guerra*, 41 L.J.C.P. 89. M

(4) Tenant not discharged from further liability by payment of rent in advance.

Under this section, as also under the English law, payment of rent before it fell due, would not discharge the tenant from further liability, *Cook v. Guerra*, L.R. 7 C.P. 132. N

In such a case it may be said that, if the tenant had waited, he might have learnt of the transfer. Such payment, moreover, is to be looked upon as an advance made to the landlord. This section, it will be noted, would equally apply to cases where there has been no transfer, in which case it would protect the tenant from liability on account of his landlord's defective title. Indeed, any other view might inflict an obvious injustice on the purchaser who bought the reversion on the faith that the rent was becoming due, but who would be defeated by a transaction between the landlord and tenant of which he had no notice. *De Nicholls v. Saunders*, L.R. 5 C.P. 589 (593). O

I.—“ No person . . . defective title ”—(Concluded).

I.—Prosecution as to rent—(Concluded).

(5) One cannot be treated both as a tenant and a trespasser.

(a) A mortgagee in possession once recognizing a tenant as in lawful possession is estopped from subsequently treating him as a trespasser. *Brich v. Wright*, 1 T.R. 378. **P**

(b) Mere receipt of rent by the mortgagee has been held to be sufficient to create an estoppel, *Doe v. Hales*, 7 Bing. 322; *Doe v. Lewis*, 13 M. and W. 241; *Doe v. Goodier*, 10 Q.B. 957. **Q**

II.—Cases arising on transfer of property.

(1) On transfer of property.

As regards cases arising—it is scarcely necessary to add that the tenant is only protected for payments made *bona fide*. **R**

(2) Payment made in collusion with transferor.

Payments made by the tenant either in collusion with his grantor or after receiving notice of the right of a third party are not protected under the section. *Moss v. Gallimore*, 1 Doug. 279; *Pope v. Biggs*, 9 B. and C. 245; *Coph v. Guerra*, L.R. 7 C.P. 132; (1864) W.R. Act X Rulings, p. 6; S.D. A. 822. **S**

(3) Rent paid to mortgagee under threat of eviction.

The tenant paying rent to the mortgagee under the threat of eviction could set off such payment in answer to the claim for the rent by the lessor. *Underhag v. Read*, 20 Q.B. D. 209; see also, *Johnson v. Jones*, 9 A. and E. 809; *Boodle v. Campbell*, 7 M. and G. 386; *Hickman v. Machin*, 4 H. and N. 716. **T**

(4) Plea of payment to former landlord.

(i) FRAME OF SUIT.

A suit for rent alternatively against the tenant, his previous landlord (the vendor of the plaintiff), upon the allegation by the tenant that the rent for the year in question had been paid to the previous landlord, was held unobjectionable in form. 12 C. 555. **U**

(ii) FORM OF DECREE.

Where in such a case the Court finds that the tenant had in fact paid the rent to the previous landlord, in good faith, the transferee is entitled to a decree against the previous landlord his (vendor) for the amount paid to him. (*Ibid.*) **Y**

III.—To Realization of profits by person in possession.

Mesne profits.

Lastly, the doctrine promulgated in the section should be equally applicable to profits realized by a person in possession, as distinguished from the real owner, protecting payments made to a benamidar, or other ostensible owner. In a suit for mesne profits or rent brought by the real owner of land against a person in possession, it is a good defence for the latter to aver that he had without notice of any adverse claim paid over the rent or profits to one, of whom he, in good faith, had held the property although the latter had really no right to it. In such a case the real owner will have no remedy except against the person to whom payments had been made. *Litchfield v. Ready*, 5 Chch. 919. **W**

2. If any person shall erect any building or make an improvement

Value of improvements made by *bona fide* holders under defective titles secured to them.

upon any lands held by him *bona fide* in the belief¹ that he had an estate in fee-simple, or other absolute estate², and such person, his heirs or assigns, or his or their under-tenants, be evicted from such lands by any person having a better title, the person who erected the building or made the improvement, his heirs or assigns, shall be entitled³ either to have the value of the building or improvement so erected or made during such holding and in such belief, estimated and paid or secured to him or them, or at the option of the person causing the eviction, to purchase the interest of such person in the lands at the value thereof, irrespective of the value of such building or improvement :

Provided that the amount to be paid or, secured in respect of such building or improvement shall be the estimated value⁴ of the same at the time of such eviction.

(Notes).

General.

(1) Analogous Indian Law.

S. 51 of the Transfer of Property Act, 1882 practically reproduces the provisions of S. 2, Act XI of 1885, 2 N.L.R. 34 (40). K

That section runs thus :—

51. "When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them."

(2) Analogous English Law.

(a) Cf. the Improvement Land Act, 1864, 27 and 28 Vic. C. 114. Y

(b) Cf. also the Settled Land Act, 1882, 45 and 46 Vic. C. 30., as amended by 50 and 51 Vic. C. 30. Z

(c) See also S. 2 of the Board of Agriculture Act, 1889, 52 and 53 Vic. C. 30. A

(3) Principle of the section.

(a) This section is based upon the principle that he, who will have equity, must do equity. See *Leigh v. Dickeson*, 15 Q.B.D. 60. B

(b) "A constructive notice trust may also arise where a person, who is only part-owner, acting *bona fide*, permanently benefits an estate, by repairs or improvements; for a lien or trust may arise in his favour in respect of the sum he has expended in such repairs or improvements." Snell's Equity, pp. 148, 149., *Lake v. Gibson*, 1 Eq. Ca. Ab. 290. C

General—(Concluded).

- (c) Thus "although a person expending money by mistake upon the property of another has no equity against the owner who is ignorant of and did not encourage him in his expenditure yet if it were necessary for the true owner to proceed in equity he would only be entitled to its assistance according to the ordinary rule by doing equity and making compensation for the expenditure, so far, of course, and only so far, as the expenditure was necessary and has proved permanently beneficial." (*Ibid.*) ; *Neeson v. Clarkson*, 4 Haro 97. D
- (d) "But a person will have no equity who lays out money on the property of another with full knowledge of the state of the title ; or who lays out money unnecessarily or improperly." *Suell's Equity*, pp. 148, 149 ; *Rennie v. Young*, 2 De G. and J. and O., 136; *Ramsden v. Dyson*, L.R. 1 H.L. 129. E

(4) Scope of the section.

- (a) In order that transferee making the improvements may get the right under the section, the only requisite condition is, that he must have made the improvements believing in good faith that he is absolutely entitled to the land. 2 N.L.R. 34. F
- (b) It has long been judicially settled (B.L.R. Sup. Vol. 595) that the maxim of the English law "*Quicquid inaedificatur solo solo cedit*" has no general application in India and even cases to which the English law as such was applicable, the Indian Legislature by Act XI of 1855 has departed from the above maxim in the cases specified in S. 2 of that Act. 14 M.L.J. 25=27 M. 211. G
- (c) By Act XI of 1855 the Legislature made provision for mitigating the rigor of the English law on this subject by securing to persons holding *bona fide* under defective titles the value of improvements made by them in cases to which English law is applicable. But by S. 3 it was enacted that nothing in that Act should extend to any case in which the English law was not applicable. B.L.R. (F.B.) Rulings 595 (597). H

(5) Doctrine of Civil law.

According to the Civil law, if a person, building on the land of another, used his own materials not knowing that the land was not his own when the building was destroyed, he could reclaim the materials, or if he was in possession of the building could refuse to deliver it to the owner, unless he was indemnified for his expenses, at least so far as they had been incurred profitably to the owner of the soil. (See Justinian's Institutes by Sanders, Book 2 Tit. 1, para 30—Per Curiam). (*Ibid.*) I

The Civil law carried its doctrine in cases of this sort much further, and allowed the purchaser or other person making improvements innocently and under the belief that he was the true owner, compensation for the benefit actually conferred upon the property. Dig. Bk., 50, Tit. 17, I. 206. "*Jure nature aequum neminem cum alterius detrimento et injuria fieri locupletiores.*" A creditor was allowed lien for meliorations (Dig. Bk. 12, Tit. 1, 1-25 ; 1 Domat Bk. Tit. 1, S. 5, Arts. 5-7). J

And Domat lays down as a general doctrine, that those who have spent money on improvements of all estate, have by the Civil law, a privilege upon those improvements, as upon a purchase with their own money. 1 Domat Bk. 3 Tit. I, Para 5, Art. 7. K

1.—“*Bona fide in the belief.*”(1) *Bona fide belief—Meaning.*

A *bona fide* “belief” under this section means not only acting honestly and fairly but includes due enquiry. 13 C.W.N. 931. L

(2) *Bona fide is equivalent to honesty.*

The term “*bona fide*” appears to be used merely as an equivalent for honesty. See 2 N.L.R. 34 (41). M

(3) *Mistake of law Bona fides.*

A party who acts under a mistake of law, may still act *bona fide* within the meaning of the section. 17 M.L.J. 9 = 1 M.L.T. 439 = 30 M. 197. N

(4) *Good faith—Negligence in investigating title.*

Good faith within the meaning of this section is not necessarily precluded by facts showing negligence in investigating the title. To hold otherwise would be to exclude a very large class of cases from a rule which is based on obvious consideration of justice. 6 M.L.T. 284. O

(5) *Person making improvement must have bona fide belief as to his title.*

(a) The foundation of the right to compensation is the erection of the building or the making of the improvement by the trespasser in the *bona fide* belief that he had a title. If he has not such a *bona fide* belief, he is mere trespasser. He spends his money at his own risk and can claim no compensation. 3 C.L.R. (195, 196). P

(b) If a person has made improvements in good faith as a *bona fide* occupant of the land and in the belief that the land is his own, he may be entitled in equity to recover the value of the Improvements. 3 C.L.J. 616 = 10 C.W.N. 765 = 33 C. 1119 citing 2 Story 478. Q

(c) Where a stranger builds on the land of another knowing setting up a manifestly false title thereto, mere delay cannot be regarded as sufficient to deprive him of his legal rights to eject the stranger. 1 A. 92. R

(6) *Question of bona fide is a question of fact.*

The question whether the transferee of immoveable property believes *bona fide* that he is absolutely entitled thereto is a question of fact. 30 M. 197 = 17 M.L.J. 9 = 1 M.L.T. 439. S

(7) *Absence of bona fide belief may be inferred from circumstances.*

Absence of *bona fide* belief on the part of the defendants that they were building on land to which they had a title may be inferred from circumstances. 3 C.L.R. 195 (197). T

(8) *Conscious avoidable of enquiry.*

Where a person consciously avoids making an enquiry though he may be said to have a belief on the matter, it would not be a belief *bona fide*. 13 C.W.N. 931. U

2.—“*That he had....absolute estate.*”(1) *Section wider than English law.*

(a) Under the law in England, to raise an equity in favour of a stranger building on another's land, two things are required.

First—That the person expending the money must suppose that he is building on his own land.

2.—“That he had....absolute estate”—(Concluded).

- * Secondly—That the real owner, at the time of the expenditure must know that the land belongs to him and not to the person expending the money in the belief that he is the owner. *Per Lord Cranworth, L.C. in Ramsden v. Dyson, L.R.H.L., 129 (141) ; 12 M. 320; 2 N.L.R. 34. Y*
- (b) But under this section the second condition mentioned above is not necessary to claim the benefit of the section and the real owner need not know at the time of the expenditure, that the land belongs to him as required by English law. The section requires merely that the person effecting improvement shall have made the improvements *bona fide* in the belief that he is absolutely entitled to the property. 2 N.L.R. 34 ; B.L.R. F.B., Sup. Vol. 595. **W**

(2) Reasons for the rule.

- (a) “For, if a stranger builds on my land knowing it to be mine, there is no principle of equity which would prevent my claiming the land with the benefit of all the expenditure made on it. There would be nothing in my conduct, active or passive, making it inequitable in me, to assert my legal rights.” *Per Lord Cranworth, L.C. in Ramsden v. Dyson, L.R. 1 H.L. 129 (141) ; 2 N.L.R. 4 ; 2 N.L.R. 34 ; 20 B. 298. X*
- (b) “It follows as a corollary from these rules, or perhaps it would be more accurate to say it forms part of them, that if my tenant builds on land which he holds under me, he does not thereby, in the absence of special circumstances, acquire any right to prevent me from taking possession of the land and buildings when the tenancy has determined. He knew the extent of his interest, and it was his folly to expend money upon a title which he knew would or might soon come to an end.” *(Ibid.)* **Y**

3.—“Shall be entitled.”

(1) Right to compensation for improvements on ejectment—Act XI of 1855, S. 2.

A purchaser at a sheriff's sale was not entitled to compensation under Act XI of 1855, S. 2, for improvements to the land during his occupation if he had relied solely on the bill of sale. *Bourke O. C. 159. Z*

(2) Bona fide purchaser—Inquiry as to title—Act XI of 1855.

A person did not become a *bona fide* purchaser within the meaning of Act XI of 1855, unless he had made all reasonable enquiries as to the title. Enquiries from neighbours were not sufficient. When therefore a purchaser who had bought property on no further information than he could obtain from neighbours was ejected by one who showed a better title. Held that he was not entitled to compensation under Act XI of 1855. *Cor., 41. A*

4.—“Amount to be paid....estimate value.”

(1) Measure of compensation.

The value of the improvements should not be calculated upon their capitalized value, or upon the basis of the return they are likely to return but upon their fair market value at the time of the surrender. The value must however be “estimated”, that is, calculated upon some intelligible basis, taking into consideration the prime cost as well as the time trouble or labour expended thereon.

4.—“Amount to be paid....estimate value”—(Continued).

In short a correct calculation involves solution of the question: “what was the value of the improvements at the time of the institution of the ejectment suit? In computing compensation a good deal must necessarily be left to conjecture.” As their Lordships of the Privy Council observed: “It is quite true that in all valuations, judicial or other, there must be room for inferences and inclinations of opinion which, being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others. Every one who has gone through the process is aware of this lack of demonstrative proof in his own mind, and knows that every expert witness called before him has had his own set of conjectures, of more or less weight according to his experience and personal sagacity.

In such an inquiry as the present, relating to subjects abounding with uncertainties, and on which there is little experience there is more than ordinary room for guess work; and it would be very unfair to require an exact exposition of reasons for the conclusions arrived at.”
26 B. 1 (21) (P.C.). B

(2) Market-value as a measure of compensation.

(a) The term “market-value” is used by the courts in three distinct senses: to denote (1) current price; [see *Dana v. Fieldler*, 12 N.Y. 40; *Cluquot's Champagne* 3 Wall, (U.S.) 114.] (2) Cash value; [see *Lawrence v. Boston* (119 Mass. 126.)] (3) The measure of recovery. [See *Read v. O. and M. Ry. Co.*, 126 Ill. 48] [See *Harvard Law Review*, 1910.] C

(b) In this last sense, the term obviously means nothing. (*Ibid.*) D

(c) By cash value is meant the cash sum for which the property in question could probably be sold by the owner, making reasonable efforts, and taking reasonable time to effect a sale. (*Ibid.*) E

(d) It is sometimes expressed as the price the property “would bring at a fair public sale, when one party wanted to sell and the other to buy.” [See *Lawrence v. Boston*, 119 Mass. 126.] (*Ibid.*) F

(e) It would seem less confusing to confine the term “market-value” to the current price in the vicinity at the time the property is to be valued. (*Ibid.*) G

(f) It is generally so confined when chattels are the subject of valuation. (*Ibid.*) H

(g) But assuming that there is not current price, the determination of value becomes a complicated question. The law as to chattels is fairly definite to the effect that the cost of reproduction, or the original cost with deduction for depreciation, where practicable, shall govern. [*Mather v. American Express Co.*, 138 Mass. 55 (plans of a house); *Starkey v. Kelly*, 50 N. Y. 677 (household furniture). See *Simpson v. N.Y.N.H. & H.R.R.*, 38 N.Y.S. 341 (Wearing apparel); *Heald v. McGown*, 15 Daly (N.Y.) 233, affirmed, 117 N.Y. 643 (electrotype plates); *Wamsley v. Atlas Steamship Co.*, 50 N.Y. App. Div. 199, reversed on another ground, 168 N.Y. 533 (Photograph negatives). Conversely, If there is a current price, evidence as to cost, etc., is inadmissible. *Allhouse v. Atord*, 28 Wis. 577.] (*Ibid.*) I

(h) Strictly there can be no current price on a tract of land, because there are no two tracts exactly alike. (*Ibid.*) J

4.—“Amount to be paid . . . estimate value”—(Continued).

- (f) Consequently, in the majority of condemnation proceedings courts are driven to determine market value in the sense of cash value. The test of cash value is the bid of a reasonable willing buyer who has in mind certain elements of valuation, such as prices paid at sales of similar property, [*Denham v. Dunbar*, 103 Mass. 365; *Patch v. Boston*, 146 Mass. 52. The similarity between the properties must be affirmatively shown. *Cummins v. D.M. & St. L. Ry. Co.*, 63 L.A. 397. In Pennsylvania evidence of sales of similar property is inadmissible. *Railroad Co. v. Patterson*, 107 Pa. St. 461. See also *Stinson v. C., St. P. & M. Ry.*, 27 Minn. 284], any use to which the property is reasonably adopted, *Boom Co. v. Patterson*, 98 U.S. 403. (A recent case strikingly illustrates that an improbable use will not be considered. A owned an area of land over which B had an easement of light, air, and access. The city condemned it for street purposes. A and B joined in a suit demanding the full current value of the land. B's easement was not materially damaged. The amount demanded involved the valuation for use with easement removed, i.e., for building purposes. The prospect of B's releasing the easement was improbable. Held, that the plaintiffs are not entitled to the compensation demanded. *Boston chamber of commerce v. Boston*, U. S. Sup. Ct. April, 4, 1910.] Original cost, [*Brown v. Calumet River Ry. Co.*, 125 Ill. 600; *St. L. & S.F. Ry. v. Smith*, 42 Ark. 265. Original cost is of varying weight as evidence of cash value: unless the purchase was recent, the evidence is inadmissible. *Lauquist v. Chicago*, 200 Ill. 60], cost of reproduction of improvements depreciation. [See *Gloucester Water Co. v. Gloucester*, 179 Mass. 365] “going concern” value (*Ibid.*) and the like. (*Ibid.*) **K**
- (j) Where there are buildings on the land an important element to be considered is the cost of reproduction. (*Ibid.*) **L**
- (k) As to when such evidence is admissible, the law is in some confusion. Where a city is condemning a water plant, reproductive cost is usually the controlling, if not the only basis of valuation. [See *Kennebec Water District v. Waterville*, 97 Me. 185; *Newburyport, Water Co. v. Newburyport*, 168 Mass. 541. *Gloucester Water Co. v. Gloucester*, supra]. (*Ibid.*) **M**
- (l) But the New York rule has been that it is inadmissible in evidence [Matter of Simmons, 130 N.Y. App. Div. 350, affirmed, 195 N.Y. 573] except, possibly, in cross-examination of an expert on real estate values. (*Ibid.*) **N**
- (m) This rule, however, seems unnecessary; for the jury is as competent as the expert to determine whether the cost of reproduction would influence the bid of the imaginary reasonable buyer. (*Ibid.*) **O**
- (n) And in a recent New York eminent domain proceedings, direct evidence of the reproductive cost of tenements on the premises was held admissible. [Matter of Blackwell's Island Bridge, 91 N.E. 278 (N.Y.).] (*Ibid.*) **P**
- (o) The Court adopted as the sole test, whether the structures were so adopted to the land as to increase its value proportionately to the cost of the structures. This is but another way of stating the imaginary reasonable buyer test. (*Ibid.*) **Q**

4.—“Amount to be paid....estimate value ”—(Concluded).

(p) It may be supposed that an eccentric millionaire has built an^e expensive country establishment distant from any fashionable resort or transportation, so that no reasonable buyer would conceivably pay anything like the amount expended. (*Ibid*). R

(q) Surely a railroad condemning the property could not limit compensation to the enhanced value of the land in the eyes of a business man ; it is submitted that reproductive cost should here also be evidence of value. (*Ibid*). S

* (r) Although the exact problem seems not to have arisen. [See *Wall v. Playy*, 169 Mass. 398] it causes one to doubt the infallibility of the reasonable buyer test. (*Ibid*). T

Act to apply only
to cases governed by
English Law.

3. Nothing in this Act contained shall extend, to
any case to which the English law is not applicable.

THE MESNE PROFITS AND IMPROVEMENTS ACT, 1855.

TABLE OF CASES NOTED IN THIS ACT.

English Cases.	PAGE
A	•
Althouse v. Alvord, 28 Wis 577	... 10
B	
Blackwell's Island Bridge, 91 N E 278 (N Y)	... 11
Boodle v. Campbell, 7 M & G 386	... 5
Boom Co. v. Patterson, 98 U S 402	... 11
Brich v. Wright, 1 T R 378	... 5
Bright v. Boyd, 2 Story 478	... 8
Brown v. Calumet River Ry. Co., 125 III 600	... 11
Boston Chamber of Commerce v. Boston, U S Sup Ct April 4, 1910	... 11
C	
Cliquot's Champagne, 3 Wall (U S) 114	... 10
Cook v. Guerra, 41 L J C p 89	... 4
— v. —, L R 7 C p 132	... 4, 5
Cummings v. D. M. & St. L. Ry. Co., 63 L A 397	... 11
D	
Dana v. Fieldler, 12 N Y 40	... 10
Denham v. Dunbar, 108 Mass 365	... 11
Doe v. Goodier, 10 Q B 957	... 5
— v. Hales, 7 Bing 322	... 5
— v. Lewis, 13 M & W 241	... 5
G	
Gloucester Water Co. v. Gloucester, 179 Mass 365	... 11
H	
Heald v. Mo Gown, 15 Daly (N Y) 283	... 10
Hickman v. Machin, 4 H & N 716	... 5
J	
Johnson v. Jones, 9 A & E 909	... 5
K	
Kennebec Water District v. Waterville, 97 Me 185	... 11
L	
Lake v. Gibson, 1 Eq Ca Ab 280	... 6
Lauquist v. Chicago, 200 III 60	... 11

TABLE OF CASES.

English cases—(Concluded).

	PAGE
Lawrence v. Boston, 119 Mass 126	10
Leigh v. Dickeson, 15 Q B D 60	6
Litchfield v. Ready, 5 Choh 919	5
M	
Mather v. American Express Co., 138 Mass 55	10
Moss v. Gallimore, 1 Doug 279	5
N	
Neeson v. Clarkson, 4 Hare 97	7
Newburyport Water Co. v. Newburyport, 168 Mass 541	11
Nicholls v. Saunders, L R 5 C P 589 (593)	4
——— v. ———, 39 L J C P 297	4
P	
Patch v. Boston, 146 Mass 52	11
Pope v. Biggs, 9 B & C 245	5
R	
Railroad Co. v. Patterson, 107 Pa St 461	11
Ramsden v. Dyson, L R 1 H L 129	7, 9
Read v. O. & M. Ry. Co., 126 Ill 48	10
Rennie v. Young, 2 De G and J & O, 136	7
S	
St. L. & S. F. Ry. v. Smith, 42 Ark 265	11
Simmons, <i>In the matter of</i> , 130 N Y App Div 350	11
Simpson v. N. Y. N. H. and H. R. R. 38 N Y S 341	10
Stinson v. C. St. P. & M. Ry., 27 Minn 284	11
Storkey v. Kelly, 50 N Y 677	10
U	
Underhay v. Read, 20 Q B D 209	5
W	
Wall v. Playy, 169 Mass 398	12
Wamsley v. Atlas Steamship Co., 50 N Y App div 199	10

I. L. R. Allahabad Series.

1 A 82	Uda Begam v. Imam-ud-din	8
--------	--------------------------	---

I. L. R. Bomaby Series.

20 B 298	Premji Jivan Bhate v. Haji Cassum Juma Ahmed	9
26 B 1 (21)	Secretary of State for Foreign Affairs v. Charlesworth Pilling and Co.	10

I. L. R. Calcutta Series.

12 C 555	Madan Mohun Lal v. Holloway	5
23 C 87 (101) (F B)	Alimuddin Khan v. Hira Lal Sen	3
33 C 1119	Dharma Das Kundu v. Amulyadhan Kundu	8

I. L. R. Madras Series.

12 M 320	Kunhammed v. Narayanan Mussad	9
27 M 211	Ismail Kani Rowthan v. Nazarali Sahib	7
30 M 197	Durgozi Row v. Fakeer Sahib	8

TABLE OF CASES.

	Calcutta Law Journal.	PAGE
8 C L J 616	Dharmadas Kundoo v. Amulyadhan Kundoo	v 8
	Calcutta Weekly Notes.	
10 C W N 765 ..	Dharmadas Kundu v. Amulya Dhan Kundu	...
13 C W N 931 ..	Abhoy Churn Ghose v. Attarmoni Dassee	...
	Calcutta Law Reports.	
8 C L R 195 (197)	Furzund Ali Khan v. Aka Ali Mahomed	...
	Bengal Law Reports.	
B L R (F B) Rulings 595 (597) ..	Thakoor Chunder Paramanick, <i>In the matter of the petition of</i>	... 7, 9
	Sutherlands Weekly Reporter.	
(1864) W R Act X Rulings, p. 6 . .	The Collector of Rajshaye v. Hursoondery Debee	...
	Madras Law Journal	
14 M L J 25	Ismail Kani Rowthen v. Nazarali Saheb	...
17 M L J 9	Durgazi Row v. Fakeer Sahib	...
	Madras Law Times.	
1 M L T 438 ...	Durgozi Row v. Fakeer Sahib	...
6 M L T 284 ...	Nanjappa Gounden v. Pereanna Gounden	...
	Nagpore Law Reports.	
2 N I, R 4 ...	Seth Mohan Lal Parwar v. Chowdhri Chunni Lal Parwar	... 9
2 N I, R 34 (40), 41	Mr. Collier v. Mrs. Baron	... 6,7,8,9
	Central Provinces Law Reports.	
14 C P L R 65 (66)	Govind Rao v. Gopal Rao	...
	Indian Miscellaneous.	
Bourke O C 159 ...	Bhoyrubnath Khettry v. Doyalchunder Laha	...
Cor 41 ...	Gour Gopal Dutt v. Bissonath Ghose	...
S D A 822 ...	Thakoor Dass Gossain	...

THE MESNE PROFITS AND IMPROVEMENTS ACT, 1855.

INDEX.

Note 1 :—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2 :—S in Brevier Roman denotes the section.

A

Act XI of 1855, Short title, *A*, 1.

Places where it has been declared to be in force, *B*, 1, 2.

Right to compensation for improvements on ejectment, *Z*, 9.

'*Bona fide*' purchaser—Inquiry as to title, *A*, 9.

to apply only to cases governed by English Law, *S*, 3, 12.

B

Bona fide, Belief—Meaning, *L*, 3.

is equivalent to honesty, *M*, 3.

Mistake of law, *N*, 3.

Good faith—Negligence in investigating title, *O*, 3.

Person making improvement must have, belief as to his title, *P—R*, 3.

Question of,—is a question of fact, *S*, 3.

Absence of, belief may be inferred from circumstances, *T*, 3.

Conscious avoidable of enquiry, *U*, 3.

purchaser—Inquiry as to title—Act XI of 1855, *A*, 9.

Bona fide holders, Value of improvements made by, under defective titles secured to them, *S*, 2, 6—12.

Principle of section, *B—E*, 6, 7.

Scope of section, *F—H*, 7.

Doctrine of Civil Law, *I—K*, 7.

Bona fide payment, No person chargeable with, made to holder under defective title, *S*, 1, 2—5.

C

Compensation, Right to, for improvements on ejectment, *Z*, 9.

Measure of, *B*, 9, 10.

Market value as a measure of, *C—T*, 10—12.

E

Ejectment, Right to compensation for improvements on, *Z*, 9.

English law, This Act to apply only to cases governed by, *S*, 3, 12.

G

Good faith, See under '*Bona fide*.'

I

Improvements, Value of, made by *bona fide* holder under defective titles secured to them, *S*, 2, 612.

Principle of section, *B—E*, 6, 7.

Scope of section, *F—H*, 6, 7.

Person making, must have been *bona fide* belief as to his title, *P—R*, 3.

Right to compensation for, on ejectment, *Z*, 9.

L

Landlord and tenant, Payment of rent in advance, *K*, 4.

Good plea against landlord and his legal representative, *L*, 4.

Assignee not bound by payment in advance, *M*, 4.

Tenant not discharged from further liability by payment of rent in advance, *O*, 4.

One cannot be treated as tenant and trespasser, *P*, *Q*, 5.

Plea of payment to former landlord, *U*, *V*, 5.

M

Market value, As a measure of compensation, *C—T*, 10—12.

Mesne profits, Realization of, by person in possession, *W*, 5.

R

Rent, No person chargeable with, *bona fide* paid to holder under defective title, *S*, 1, 2—5.

bona fide paid to holder under defective title, *S*, 1, 2—5.

Protection as to, *K—Q*, 4, 5.

Payment of, in advance, *K*, 4.

Good plea against landlord this legal representative, *I*, 4.

Assignee not bound by payment in advance, *M*, 4.

Tenant not discharged from further liability by payment of, in advance, *N*, *O*, 4.

One cannot be treated both as tenant and trespasser, *P*, *Q*, 5.

Title, No person chargeable with rent, *bona fide* paid to holder under defective, *S*, 1, 2—5.

Value of improvements made by *bona fide* holders under defective titles secured to them, *S*, 2, 6—12.

Principle of section, *B—E*, 6, 7.

Scope of section, *F—H*, 7.

Doctrine of Civil law, *I—K*, 7.

Good faith—Negligence in investigating, *O*, 8.

Person making improvements must have *bona fide* belief as to his, *P—R*, 8.

Transfer of property, Cases arising on, *R—U*, 5.

Payment made in collusion with transferor, *S*, 5.

Rent paid to mortgagee under threat of eviction, *T*, 5.

Plea of payment to former landlord, *U*, *V*, 5.

THE
PARTITION ACT, 1893.
(ACT IV OF 1893)

(WITH THE CASE-LAW THEREON)

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THE PARTITION ACT, 1893¹.

(ACT IV OF 1893.)

[Passed on the 9th March, 1893.]

An Act to amend the Law relating to Partition.

WHEREAS it is expedient to amend the law relating to partition; It is hereby enacted as follows:—

(Notes).

1.—“The Partition Act, 1893.”

(1) Statement of Objects and Reasons.

For——see Gazette of India, 1892, Pt. V, p. 46.

A

(2) Report of the Select Committee.

For——see Gazette of India, 1893, Pt. V, p. 51.

B

(3) Proceedings in Council.

For——see Gazette of India, 1893, Pt. VI, pp. 38 and 49.

C

(4) Civil Rules of Practice made by the Madras High Court.

For——under this Act, the Code of Civil Procedure and certain other Acts for observance by the Subordinate Civil Courts of that Presidency, except the Madras Small Cause Court, see Fort St. George Gazette, 1905, Supplement, p. 1.

D

(5) Act declared in force in Upper Burma.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

E

(6) Reasons for the passing of this Act—Nature of the Act.

(a) The present statutory law on the subject of partition, apart from various local laws dealing with the partition of land paying revenue to Government, is contained in Ss. 265 (S. 54, C.P.C., 1908) and 396 (O. XXVI, rr. 13, 14, C.P.C., 1908) of the Code of Civil Procedure, 1882. See Statement of Objects and Reasons.

F

(b) S. 265 simply enacts that the partition or separation of a revenue-paying estate shall be made only by the Collector, and need not therefore be noticed further, as the present Bill leaves untouched all Local laws dealing with the partition of such property. (*Ibid.*)

G

(c) S. 396 lays down the procedure which should be adopted in the partition of lands not paying revenue to Government. That section, however, only authorizes the Court to divide the property, and in some exceptional cases where an equal division is not practicable to award a money compensation for the purpose of equalizing the value of the shares. (*Ibid.*)

H

(d) But as the law now stands the Court must give a share to each of the parties and cannot direct a sale and division of the proceeds in any case whatever. (*Ibid.*)

I

(e) Instances however, occasionally occur where there are insuperable practical difficulties in the way of making an equal division and in such cases

Act IV of 1893 (THE PARTITION ACT).

1.—“The Partition Act, 1893”—(Continued).

the Court is either powerless to give effect to its decree, or is driven to all kinds of shifts and expedients in order to do so. Such difficulties are by no means of very rare occurrence, although in many cases where the parties are properly advised they generally agree to some mutual arrangement, and thus relieve the Court from embarrassment. (*Ibid.*) J

(f) It is proposed in the present Act to supply this defect in the law by giving the Court, under proper safeguards, a discretionary authority to direct a sale where a partition cannot reasonably be made and a sale would, in the opinion of the Court, be more beneficial for the parties. (*Ibid.*) K

(g) But having regard to the strong attachment of the people of this country to their landed possessions, it is proposed to make the consent of parties interested at least to the extent of a moiety in the property a condition precedent to the exercise by the Court of this new power. (*Ibid.*) L

(h) In order at the same time to prevent any oppressive exercise of this privilege, it is proposed to give such of the share-holders as do not desire a sale the right to buy the others out at a valuation to be determined by the Court. (*Ibid.*) M

(i) The power, moreover, which it is proposed to give to the Court will be a discretionary one to be exercised on a consideration of all the circumstances of the case. (*Ibid.*) N

(j) It should be added that where the Court is obliged to direct a sale, a right of pre-emption is given by the Bill to the parties similar to that conferred on share-holders by S. 310 of the Code of Civil Procedure, 1882. (*Ibid.*) O

(k) It is also proposed in the Bill to give the Court the power of compelling a stranger, who has acquired by purchase a share in a family dwelling-house when he seeks for a partition, to sell his share to the members of the family who are the owners of the rest of the house at a valuation to be determined by the Court. (*Ibid.*) P

(l) This provision is only an extension of the privilege given to such share-holders by S. 44, paragraph 2, of the Transfer of Property Act, and is an application of a well-known rule which obtains among Mahomedans everywhere and by custom also among Hindus in some parts of the country. (*Ibid.*) Q

(m) The other sections of the Bill only deal with matters of procedure and do not call for any detailed notice. (*Ibid.*) R

(7) Act a general Act.

The Act purports to be a general Act extending to the whole of British India. *Per Stanley, C.J.* in 30 A. 324=5 A.L.J. 352 (354)=A.W.N. (1909), 126=4 M.L.T. 38. S

(8) Applicability of Act.

The Act cannot apply unless, in a suit for partition instituted prior to the commencement of the Act a decree for partition might have been made. 17 O.P.L.R. 45 (47). T

1.—“The Partition Act, 1893 ”—(Concluded).

(9) Partition of the house-latrine—Common user—Compensation for the sale of a latrine and for passage thereto.

The plaintiff and the defendant who are brothers partitioned their dwelling house in 1893 and at the time of partition it was arranged that each brother should enjoy the use of the house-latrine and of the passage thereto. The plaintiff brought the present suit for a partition of the latrine. The first Court held that the arrangement for common user was equivalent to a partition and could not be disturbed. The Lower Appellate Court, applying the provisions of the Partition Act, 1893 to the case, sanctioned the sale of the latrine and passage to the plaintiff and awarded the sale-proceeds as compensation to the defendant. Held that the Partition Act did not apply, that the latrine had in effect already been partitioned and that the plaintiff was not entitled to the relief asked for. (*Ibid.*)

Q

(10) Partition need not be by metes and bounds.

(a) A partition need not necessarily be by metes and bounds. 17 C.P.L.R. 45 (47).

Y

(b) This is well explained in a passage from the Viramitrodaya (Chap. I section 4):—“The term partition signifies the adjustment into specific portions of the divers rights which accrued to the entire estate. Where a single chattel such as a female slave, or a cow, or the like is common to many co-parceners then also the meaning of the term partition, namely, the adjustment of rights into specific portions, holds good; because the right of each co-sharer is made known by means of the service of the slave, or the milking of the cow, or the like, done at regulated intervals.” (*Ibid.*)

W

(11) Competency of Court to award money—Decree in lieu of share.

Independently of the provisions of the Partition Act, 1893, a Court is not justified in passing a mere money-decree in lieu of possession by partition as claimed in the plaint. 86 P.R. 1907=52 P.W.R. 1907=1 Ind. Cas. 697 (698) (10 C. 675, not applied).

X

* Title, extent, commencement and saving.

1. (1) This Act may be called the Partition Act, 1893;

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

(4) But nothing herein contained shall be deemed to affect any local law providing for the partition of immoveable property paying revenue to Government.

2. Whenever in any suit for partition in which, if instituted prior

Power to Court to order sale instead of division in partition suits.

to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the share-holders therein or

of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property, and

distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale¹ of the property and a distribution of the proceeds.

(Notes).

N.B.—See, also, cases noted under S. 4, *infra*.

Applicability of section.

This section applies to Mahomedans as well as to Hindus. *Per Stanley, C.J.*
30 A. 324 = 5 A.L.J. 352 (354) = A.W.N. (1908), 126 = 4 M.L.T. 38. Y

I.—“Whenever in any suit . . . sale.”

- (1) **Property not capable of division—Plaintiff if may sue for sale of share by defendant at a valuation—All share-holders to bid for property.**

Where the nature of the property jointly owned by the plaintiff and the defendant is such that a division of it amongst them cannot reasonably or conveniently be made the plaintiff has not the right to claim that the defendant should be compelled to transfer his share to the plaintiff at a valuation, merely because he happened to have possession of the property at the commencement of the action. The proper course is to direct a sale of the property amongst the co-sharers, and it should be given to that share-holder who offers to pay the highest price above the valuation made by the Court, 15 C.W.N. 552 [*Williams v. Games*, L.R. 10 Ch. App. 204 (1875) and *Pitt v. Jones*, 5 App. Cas. 651 (1890), F.]. But see 15 C.W.N. 555. Z

- (2) **Decree for partition—Power of Court to order sale instead of division.**

- (a) S. 2 of the Partition Act, which gives the Court power to order sale instead of division in partition suits, applies equally where the Court has to pass a decree in a suit for partition, as also where the Court has already passed a decree directing partition in a particular mode, and the mode becomes impracticable or inexpedient. 10 Bom.L.R. 23 = 32 B. 103 = 3 M.L.T. 141 [24 M. 639; 5 C.W.N. 128, F.]. A
- (b) This section which empowers a Court to order a sale of property instead of a division, in partition suits, may be applied though a preliminary order defining the share of a plaintiff and directing partition has been passed. 24 M. 639. B
- (c) There is nothing in this section to limit its operation to cases in which no order has been passed. (*Ibid.*) C
- (d) S. 10 makes it quite clear that the Act can be applied until the scheme of partition has been finally approved, i.e., until a final decree has been passed under this section. 24 M. 639 (641). D
- (e) It is for those who object to partition representing at least a moiety of the interests in the property to show that partition cannot, by reason of the circumstances there stated, be reasonably or conveniently effected, and that a sale of the property will be more beneficial for all the shareholders. (*Ibid.*) E

1.—“Whenever in any suit....sale”—(Concluded).

(f) Having regard to the nature of the property in this case, namely, a dwelling-house, the size of the house, and the number of shares there can be no doubt that a partition must be inconvenient and unreasonable, and that a sale will be more beneficial for all parties. (*Ibid.*) F

(g) S. 4 *infra*, moreover, gives the defendants the right to purchase the plaintiff's shares, since he, being a stranger, has bought a part of the family house. If the defendants exercise their option the provision of this section need not be applied. (*Ibid.*) G

(3) Partition of a house in two divisions—The mode of division found inexpedient in execution of the decree.

A decree for partition of a house ordered its division into two equal moieties. In execution of the decree this mode of division was found inexpedient, and the Court, therefore, ordered the house to be sold and the sale-proceeds to be equally divided between the parties under this section of appeal—*held*, that the order was right. 32 B. 103=10 Bom.L.R. 23=3 M.L.T. 141. H

(4) Preliminary decree—Order for sale—Civil Procedure Code (Act XIV of 1882), S. 396.

Where in a suit for partition a Commissioner appointed under S. 396, C.P.C., to make a partition after the preliminary decree had been passed, submitted a report and the Court on consideration of the report was of opinion that the property could not be conveniently partitioned, and then passed an order for sale of the property under the provisions of this section, *held*—That the Court could pass an order under this section for sale of the property, and the fact that a preliminary decree had been passed was no bar to his proceeding under that section. 5 C.W.N. 128. [*F.*, 32 B. 103=10 Bom.L.R. 23=3 M.L.T. 141.] I

3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-S. (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

(Notes).

Applicability of section.

This section applies to Mahomedans as well as to Hindus. *Per Stanley, C.J.* 30 A. 324=5 A.L.J. 352 (354)=A.W.N. (1908), 126=4 M.L.T. 38. J

1.—“*Procedure when sharer undertakes to buy.*”

Sale of property of which partition is sought—Right to apply for leave to purchase.

(a) Under S. 3 of Act IV of 1893, the person at whose instance an order for sale of property sought to be partitioned is made is not entitled to apply for leave to purchase the share or shares of the other party or parties entitled to partition. A.W.N. (1895), 231. **K**

(b) Under S. 3 of the said Act also the Court is not competent to order the whole of the property in question to be sold at a valuation, but only the share or shares of the applicant or applicants for sale. (*Ibid.*) **L**

4 1. (1) Where a share of a dwelling-house² belonging to an undivided family³ has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a share-holder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share⁴ to such share-holder, and may give all necessary and proper directions⁵ in that behalf.

(2) If in any case described in sub-S. (1) two or more members of the family being such share-holders severally undertake to buy such share, the Court⁶ shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

(Notes).

N.B.—See cases noted under S. 2, *supra*.

1.—“*Section 4.*”

Application under the section may be made after preliminary decree—Elements necessary to attract operation of section.

(a) An application under S. 4 of the Partition Act, 1893, may be made after the preliminary decree. 7 Ind. Cas. 436=12 C.L.J. 525 [3 Ind. Cas. 247=10 C.L.J. 503, R.; 5 C.W.N. 128; 24 M. 639, 21 A. 409; 32 B. 103=10 Bom.L.R. 23=3 M.L.T. 141, F.; 7 C.L.J. 98, D.]. **M**

(b) The operation of this section cannot be avoided if the property comprised in the suit includes in addition to the dwelling house other lands owned by the parties. The elements which must co-exist to attract the operation of S. 4 are, first, that the dwelling should belong to an undivided family; secondly, that a share thereof should have been transferred to a person who is not a member of such family; and thirdly, that the transferee should sue for partition. The circumstance that the plaintiff had purchased, in addition to a share of the dwelling house, a share of other lands as well, of which he sought partition in the suit does not render inapplicable the provisions of S. 4. (*Ibid.*) (23 B. 77, R.). **N**

(c) This section does not provide that the application contemplated by it should be made before the preliminary decree; on the other hand, it is obvious that the application cannot be made till the rights of the parties have been determined by the preliminary decree. (*Ibid.*) (437). **O**

1.—“Section 4 ”—(Concluded).

- (d) To take one illustration it is conceivable that there may be a dispute between the parties as to whether the plaintiff has really acquired any interest in the dwelling house or not, and whether, he is entitled to demand a partition of it. Such question must, clearly, be determined before a defendant can be expected to make an application under S. 4. (*Ibid.*) P
- (e) As was pointed out by this Court in the case of 10 C.L.J. 503=3 Ind. Cas. 247; the question whether a particular property alleged to be joint really possesses that character, must be determined before the preliminary decree is made; all questions involving the title of the parties and their right to any relief within the issues, are judicial in character, and must be determined by the Court, such determination to be made ordinarily by the Court, and incorporated in the interlocutory decree before any partition is made or directed. (*Ibid.*) Q
- (f) An application, under this section, therefore, cannot be properly made, before it has been declared by the preliminary decree, that the plaintiff, who is not a member of the family, has acquired a valid title to a share thereof, and is entitled to claim partition. (*Ibid.*) R
- (g) This view has been adopted in the cases of 5 C.W.N. 124; 24 M. 639; 21 A. 409; 32 B. 103=10 Bom. L.R. 23=3 M.L.T. 141; where it was ruled that an application, under S. 2 or S. 4 of this Act may be made after the preliminary decree. (*Ibid.*) S

2.—“ Dwelling-house. ”

(1) “ House,” scope of the term.

The term “ house ” embraces not merely the structure or building, but includes also adjacent buildings, cartilage, garden, courtyard, orchard and all that is necessary for the convenient occupation of the house; but not that which is only for the personal use and convenience of the occupier. 7 Ind. Cas. 436=12 C.L.J. 525. [*Steel v. Midland Ry. Co.*, 1 Ch. App. 275=12 Jur. (N.S.) 218=14 L.T. 3=14 W.R. 367; *Governors of St. Thomas Hospital v. Charing Cross Ry. Co.*, 1 J. and H. 400=30 L.J. Ch. 395=7 Jur. (N.S.) 256, *Brighten and South Coast Ry. Co.*, 3 Deg. and S. 653=33 Beav. 104=2 N.R. 566; 33 L.J. Ch. 29=9 L.T. 14=11 W.R. 1088, *Kerford v. Seacombe & Co., Ry Co.*, 57 L.J. Ch. 270=58 L.T. 445=36 W.R. 431=52 J.P. 487 and *Low v. Staines*, 16 T.L.R. 184=64 J.P. 212, *Rel.*]. T

(2) Mahomedan dwelling-house.

The terms of this section are applicable to Mahomedan dwelling-houses also. See 30 A. 324=5 A.L.J. 352=4 M.L.T. 38=A.W.N. (1908), 126, noted *infra*. U

3.—“ Undivided family. ”

(1) Family—Meaning.

- (a) The word “ family ” as used in the Partition Act, ought to be given a liberal and comprehensive meaning, and it does include a group of persons related in blood, who live in one house or under one head or management. There is nothing in that Act to support the suggestion that the word was intended to be used in a very narrow and restricted sense, namely, a body of persons who can trace their descent from a common ancestor. 7 Ind. Cas. 436=12 C.L.J. 525. Y

3.—“Undivided family”—(Continued).

- (b) The words “undivided family” in the section must be taken to mean undivided *qua* the dwelling house in question, and to be a family which owns the house but has not divided it. (*Ibid.*) [30 A. 324 = A.W.N. (1908) 126 = 5 A.L.J. 352 = 4 M.L.T. 38 (F.B.), F.; 29 A. 308 = 4 A.L.J. 209 = A.W.N. (1907) 52, *diss.*] W
- (c) It is not necessary to constitute an undivided family for the purposes of S. 4 of the Partition Act that the members of the family should constantly reside in the dwelling house; nor is it necessary that they should be joint in mess. *Ibid.* [30 A. 324 (F.B.) = A.W.N. (1908) 126 = 5 A.L.J. 352 = 4 M.L.T. 38; and 23 B. 73, *Rel.*] X
- (d) The term “family” is not defined in the Partition Act, and it would not be possible or desirable to frame a comprehensive formula or exhaustive definition to indicate all that is easily understood by the term “family”. (*Ibid.*) (439). Y
- (e) As was well observed by *Kindersley, V.C.*, in *Green v. Marsden*, 1 Drew 646 (651) = 1 Eq. R. 437 = 22 L.J. Ch. 1092 = 1 W.R. 511, the word “family” is, in itself, a word of a most loose and flexible description. (*Ibid.*) Z
- (f) It is in fact as *Wickens, V.C.*, said in *Burt v. Hellyar* L.R. 14 Eq. 160, a popular and not a technical expression, and its meaning is often controlled by the context. (*Ibid.*) A
- (g) As is pointed out in the Oxford Dictionary, Volume, IV, p. 55, although the term “family” is sometimes used to include those descended or claiming descent from a common ancestor, it has, very often, a much wider import; it is often used to indicate a body of persons formed by those who are merely connected by blood or affinity it is sometimes used to include even a body of persons who live in one house or under one head. (*Ibid.*) B
- (h) In the case of *Wilson v. Cochran*, 31 Texas 677 = 98 Am. Dec. 553; the matter was put clearly and concisely as follows:—“The term family embraces a collective body of persons living together in one house or within the cartilage. In legal phrase, this is the generic description of a “family”. (*Ibid.*) C
- (i) It embraces a household comprised of parents or children or other relatives or domestic servants, in short, every collective body of persons living together within the same cartilage, subsisting in common, and directing their attention to a common object—the promotion of their mutual interests, and social happiness. This is the most popular acceptance of the word. (*Ibid.*) D

(2) Undivided family—Meaning.

Held, that according to S. 4 of this Act the words “undivided family” must be so interpreted as to include every family whether it to be Hindu or otherwise and one which is undivided *qua* the particular dwelling house; and the words “dwelling house” must be interpreted to mean not only the house in which the members of an undivided family actually live but also which belongs to the family and in which other members of that family have a right to live if they feel so inclined to do. 9 O.C. 156. E

3.—“Undivided family” —(Continued).

(3) “Undivided family,” Meaning of—S. 4, whether applicable to Mahomedans.

- (a) “The question which has been referred to us for determination in this case is whether or not Muhammadans are excluded from the benefit of S. 4 of the Partition Act, No. IV of 1893. “*Per Stanley, C.J.*, 30 A. 324 = 5 A.L.J.R. 352 (354) = A.W.N. (1908), 126 = 4 M.L.T. 38. [29 A. 308 = A.W.N. (1907), 52 = 4 A.L.J. 209, *Overruled.*] F
- (b) This section prescribes that where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a share-holder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such share-holder. (*Ibid.*) G
- (c) It is contended on the one hand that the words “undivided family” as used in this section mean a joint family and are confined to Hindus or to Muhammadans who have adopted the Hindu rule as to joint family property. (*Ibid.*) H
- (d) On the other hand the contention is that the expression is of general application and means a family, whether Hindu, Muhammadan, Christian, *et cetera*, possessed of a dwelling-house which has not been divided or partitioned among the members of the family. (*Ibid.*) I
- (e) The Act purports to be a general Act extending to the whole of British India, and admittedly Ss. 2 and 3 apply to Muhammadans as well as to Hindus. (*Ibid.*) J
- (f) S. 2 *supra* enables the Court in a suit for partition, in a case in which a division of property cannot reasonably or conveniently be made and in which a sale and distribution of the proceeds would be more beneficial for all the share-holders, on the request of share-holders interested individually or collectively to the extent of a moiety or upwards, to direct a sale of the property. (*Ibid.*) K
- (g) The succeeding section empowers the Court, in a case coming within the previous section, if any share-holder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, to order a valuation of the share or shares and to offer the same to such share-holder at the price so ascertained. (*Ibid.*) L
- (h) Then follows the fourth section, and in it nothing is found to indicate that it was intended to apply to any limited class of the community. (*Ibid.*) M
- (i) The words “undivided family” as used in this section appear to be borrowed from S. 41 of the Transfer of Property Act. (*Ibid.*) N
- (j) The last clause of that section prescribes that where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the dwelling house. (*Ibid.*) O
- (k) This provision of the statute is clearly of general application, and the effect of it is to compel the transferee of a share of a dwelling-house belonging to an undivided family who is a stranger to the family to enforce his rights in regard to such share by partition. (*Ibid.*) P

3.—“Undivided family”—(Concluded).

- (l) There appears to be no reason why the words “undivided family” as used in S. 4 of the Partition Act, should have a narrower meaning than they have in S. 44 of the T.P. Act. (*Ibid.*) Q
- (m) If the Legislature intended that S. 4 should have limited operation, one should expect to find some indication of this in the language of the section. (*Ibid.*) R
- (n) For example, instead of the words “undivided family” the expression “undivided Hindu family” or “joint family” might have been used. (*Ibid.*) S
- (o) The question came before a Bench of this Court in 29 A. 308 which was a second appeal. The respondent to it was not represented. *Knox and Richards, JJ.*, in that case held on the analogy of the Full Bench ruling in 18 A. 282 that S. 4 did not apply to a Muhammadan family, but they did so with some regret. (*Ibid.*) T
- (p) In 18 A. 282 it was held that the words “joint family property” in Art. 127 of Sch. II of the Limitation Act, mean the property of a joint family. In that case the word “joint” which has a settled and well defined meaning is used, and it is in no sense ambiguous. It could not be used as descriptive of property held in common. I fail to discover that there is any analogy between the two cases. (*Ibid.*) U
- (q) It seems that the object of the section, as was pointed out by Mr. Wells, Judicial Commissioner, in 9 O.C. 156 is to prevent a transferee of a member of a family who is an outsider from forcing his way into a dwelling-house in which other members of his transferor’s family have a right to live, and that the words “undivided family” must be taken to mean “undivided *qua* the dwelling-house in question and to be a family which owns the house but has not divided it.” (*Ibid.*) Y
- (r) It has been pointed out to the Court that the Partition Act has been extended to Upper Burma under the Upper Burma Laws Act, No. XIII of 1895. (*Ibid.*) W
- (s) No part of the Act merely but the whole Act has been so extended. (*Ibid.*) X
- (t) If S. 4 was intended by the Legislature to apply to Hindus only or persons who have adopted the Hindu rule of joint family property, it is unlikely that it would have so extended S. 4 in view of the fact that there are very few Hindus in Upper Burma. (*Ibid.*) Y
- (u) For these reasons, Muhammadans are not excluded from the benefit of S. 4, Partition Act, 1893. (*Ibid.*) [9 O.C. 158, *F.*; 29 A. 308, *Overruled.*] Z

4.—“The Court shall . . . sale of such share.”

- (1) **Partition—Property not conveniently divisible—Sale among co-sharers to highest bidder.**

Where the nature of the property to be divided in a partition suit, is such that a division thereof amongst all the share-holders cannot reasonably or conveniently be made the proper course to follow is to direct a sale of the property among the co-sharers; and it should be given to that shareholder who offers to pay the highest price above the valuation made

4.—“*The Court shall....sale of such share*”—(Concluded).

by the Court. The defendant cannot be compelled to transfer his share at a valuation to the plaintiff merely because the latter happened to have possession of the property at the time when he commences the action. 7 Ind. Cas. 844, *Williams v. Games*, L.R. 10 Ch. App. 204=44 L.J. Ch. 245=32 L.T. 414=28 W.R. 779 and *Pit v. Jones*, 5 App. Cas. 661=49 L.J. Ch. 795=43 L.T. 385=29 W.R. 33, *Rel*; 6 C.L.J. 8 (note) D.] A

- (2) Plot built on by co-sharer, not convenient for division—Partition of tank—Court's discretion to refuse partition and to allow the party in possession to buy the other party out—Equity.

The defendants in a suit for partition had built a dwelling-house on a plot of 7 cottahs of land without opposition from the plaintiff who was a stranger and owned only a 1/10th share in it and in an adjoining plot of 1 bigha 6 cottahs. The lower appellate Court finding that it would be very inconvenient for all parties concerned if these plots were divided by metes and bounds allowed the defendants to buy up the plaintiff's shares at a proper valuation : B

Held—That whether S. 4 of Act IV of 1893 applied to the case or not it is a well-known principle of equity which must be adopted in all partition cases that when it is inconvenient to divide a property, that property must be left in the possession of the person in occupation and the other person who cannot conveniently get actual possession, compensated. A tank covering one bigha in which plaintiff owned a 1/20th share was left joint, the lower Appellate Court holding that it was not convenient to divide it. The High Court affirmed that decision. 15 C.W.N. 555. C

5.—“*Necessary and proper directions.*”

Suit for partition—Extension.

- (a) It is open to a Court, which has fixed a time within which the price of a share of the property which is to be partitioned, is to be paid, to afterwards extend that time. 1 A.L.J. 474. D
- (b) Under sub-S. 1 of S. 4, when the Court has made the valuation of the share and directed the sale thereof, it may give all necessary and proper direction in that behalf. *Ibid* (475.) E

6.—“*The Court.*”

G.P.C. (Act XIV of 1882). S. 331—Resistance or obstruction—Decree for partition—Decree for possession.

Where a person is held entitled to the possession of a share in certain property after partition, and a Commissioner is appointed to partition the property and put him in possession of his share, resistance to such Commissioner is ‘resistance or obstruction,’ within the meaning of S. 331 of the Code of Civil Procedure for possession. It is only when the suit is for partition that a member of the joint family may buy out the plaintiff, under S. 4 of the Partition Act. He is not entitled to do so when the suit has been decreed and the decree for possession is being executed. 7 C.L.J. 98. But see 7 Ind. Cas. 436, *supra*. F

5. In any suit for partition a request for sale may be made or an undertaking, or application for leave, to buy, may be given or made on behalf of any party under disability by any person authorized to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking or application unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

6. (1) Every sale under S. 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time.

(2) On any such sale any of the share-holders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a share-holder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the share-holder.

7. Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely :-

(a) if the property be sold under a decree or order of the High Court of Calcutta, Madras or Bombay in the exercise of its original jurisdiction, or of the Court of the Recorder of Rangoon, the procedure of such Court in its original civil jurisdiction for the sale of property by the Registrar ;

(b) if the property be sold under a decree or order of any other Court, such procedure as the High Court may from time to time by rules prescribe in this behalf, and until such rules are made, the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees.

XIV of 1882.

8. Any order for sale made by the Court under Ss. 2, 3 or 4 shall be deemed to be a decree within the meaning of S. 2 of the Code of Civil Procedure.

XIV of 1882. Orders for sale to be deemed decrees.

9. In any suit for partition the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Act.

Saving of power to order partly partition and partly sale.

10. This Act shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

Application of Act to pending suits.

(Notes).

1. —“ *This Act shall apply.... commencement.* ”

**Partition suit instituted before commencement of Act—Interlocutory decree—
Offer by party to pay compensation to other to avoid partition of house-property.**

- (a) This section provides that the Act applies to suits instituted before the commencement of the Act, in which no scheme for the partition of the property has been finally approved by the Court. 21 A. 409. G
- (b) Where, therefore, after the passing of an interlocutory decree, in a partition suit instituted before the coming into force of the Act, a party asked, as regards a portion of the property consisting of houses, that instead of their being partitioned, he might be allowed to pay compensation to the other party, under the provisions of Act IV of 1893, *held* that the Court was wrong in refusing to accede to the request on the ground that the Act was not applicable to such a case. 21 A. 409. H
- (c) An interlocutory decree in a partition suit declaring that plaintiff is entitled to possession of a certain share, is not one which is capable of execution as a partition decree. There must be a further application to the Court for the appointment of an amin to prepare a scheme of partition for approval by the Court. It is only after a decree has been made by the Court expressing its approval of the partition scheme that there is any decree capable of execution as a partition decree. *Ibid.* (20 A. 311 ; A.W.N. (1898), 99, R.). I

THE
INDIAN PATENTS AND DESIGNS
ACT, 1911.

(ACT II OF 1911).

(WITH THE CASE-LAW THEREON)

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THE INDIAN PATENTS AND DESIGNS ACT, 1911.

ACT II OF 1911.

CONTENTS.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.

PART I.

PATENTS.

Application for and Grant of Patent.

3. Application.
4. Specification.
5. Proceedings upon application.
6. Advertisement on acceptance of application.
7. Use of invention on acceptance of application.
8. Inquiry before sealing patent.
9. Opposition to grant of patent.
10. Grant and sealing of patent.
11. Date of patent.
12. Effect, extent and form of patent.
13. Fraudulent applications for patents.

Term of Patent.

14. Term of patent.
15. Extension of term of patent.
16. Restoration of lapsed patent.

Amendment of Application or Specification.

17. Amendment of application or specification by Controller.
18. Amendment of specification by the Court.
19. Restriction on recovery of damages.

SECTIONS.*Register of Patents.***20. Register of Patents.***Crown.***21. Patent to bind Crown.***Compulsory Licenses and Revocation.***22. Compulsory licenses and revocation.****23. Revocation of patents worked outside British India.****24. Power of Controller to revoke surrendered patent.****25. Revocation of patent on public grounds.***Legal Proceedings.***26. Petition for revocation of patent.****27. Notice of proceedings to persons interested.****28. Framing issue for trial before other Courts.****29. Suits for infringement of patents.****30. Exemption of innocent infringer from liability for damages.****31. Order for inspection, etc., in suit.****32. Certificate of validity questioned and costs thereon.****33. Transmission of decrees and orders to the Controller.****34. Power of High Court to stay proceedings, etc.,****35. Hearing with assessor.****36. Remedy in case of groundless threats of legal proceedings.***Miscellaneous.***37. Grant of patents to two or more persons.****38. Novelty of invention.****39. Loss or destruction of patent.****40. Provisions as to exhibitions.****41. Models to be furnished to Indian Museum.****42. Foreign vessels in British Indian waters.**

PART II.**DESIGNS.***Registration of Designs.***43. Application for registration of designs.****44. Registration of designs in new classes.****45. Certificate of registration.****46. Register of Designs.**

SECTIONS.

Copyright in Registered Designs.

- 47. Copyright on registration.
- 48. Requirements before delivery on sale.
- 49. Effect of disclosure on copyright.
- 50. Inspection of registered designs.
- 51. Information as to existence of copyright.

Industrial and International Exhibitions.

- 52. Provisions as to exhibitions.

Legal Proceedings.

- 53. Piracy of registered design.
- 54. Application of certain provisions of the Act as to patents and designs.

PART III.

GENERAL.

Patent Office and Proceedings thereat.

- 55. Patent Office.
- 56. Officers and clerks.

Fees.

- 57. Fees.

Provisions as to Registers and other Documents in the Patent Office.

- 58. Notice of trust not to be entered in registers.
- 59. Inspection of and extracts from registers.
- 60. Privilege of reports of Controller.
- 61. Prohibition of publication of specification, drawings, etc., where application abandoned, etc.
- 62. Power for Controller to correct clerical errors.
- 63. Entry of assignments and transmissions in registers.
- 64. Rectification of register by Court.

Powers and Duties of Controller.

- 65. Powers of Controller in proceedings under Act.
- 66. Publication of patented inventions.
- 67. Exercise of discretionary power by Controller.
- 68. Power of Controller to take directions of Governor General in Council.
- 69. Refusal to grant patent, etc., in certain cases.
- 70. Appeals to the Governor General in Council.

Evidence, etc.

- 71. Certificate of Controller to be evidence.
- 72. Transmission of certified printed copies of specifications, etc.
- 73. Applications and notices by post.
- 74. Declaration by infant, lunatic, etc.

SECTIONS.

Agency.

75. Subscription and verification of certain documents.

76. Agency.

Powers, etc., of Governor General in Council.

77. Power for Governor General in Council to make rules.

Offences.

78. Wrongful use of words "Patent Office."

Savings and Repeal.

79. Saving for prerogative.

80. Repeal.

- 81. Substitution of patents for rights under repealed Act.

THE INDIAN PATENTS AND DESIGNS ACT, 1911.¹

(ACT II OF 1911.)

PASSED BY THE GOVERNOR GENERAL OF INDIA
IN COUNCIL.

(Received the assent of the Governor General on the 2nd March, 1911.)

*An Act to amend the law relating to the protection of Inventions
and Designs.*

WHEREAS it is expedient to amend the law relating to the protection of inventions and designs; It is hereby enacted as follows:—

(Notes).

I.—“The Indian Patents and Designs Act, 1911.”

Necessity for the passing of this Act.

(1) Earlier enactments, English and Indian.

The Inventions and Designs Act, V of 1888, now in force, is based in all material respects as regards inventions, on the previous Act, XV of 1859, which, in turn, was practically a repetition of Act VI of 1856. This, the earliest Act in India, was founded on the English Patent Law of 1852 contained in the Statute 16 and 17, Vict. c. 115. [See the Statement of Objects and Reasons.] A

(2) Grant of patent under the English statute of 1852 and the Indian Act of 1859.

Under the Statute of 1852, a patent was granted subject to the subsequent filing of a specification, but under the Indian Act of 1859 an advance in procedure was made in that the exclusive privilege, which is the Indian equivalent to a patent, only accrued when a specification was filed. (*Ibid.*) B

(3) Grant of patent under 46 and 47 Vict., c. 57 and 7 Edw. 7 C. 29.

By the later Statute of 1883 (46 and 47 Vict. c. 57) the patent was not granted until after the acceptance of a correct specification and the absence of failure of opposition by interested parties; and this procedure is still followed in the English law which is contained in the Patents and Designs Act, 1907 (7 Edw. 7 C. 29). (*Ibid.*) C

(4) Introduction of English practice in entirety in Act V of 1888 avoided.

Although the Indian Act of 1888 was passed five years after the United Kingdom Statute of 1883, it was felt that the time was not yet ripe in this country for introducing the English practice in its entirety as the volume of patent work was then small. (*Ibid.*) D

1. —“ *The Indian Patents and Designs Act, 1911* ”—(Continued).

Necessity for the passing of this Act—(Continued).

(5) Time ripe for introducing English practice.

Now, however, that it is growing and is likely to do so at a much greater rate in the future, it is thought advisable to bring the practice in this country more into conformity with that of the United Kingdom, thereby following the example of most of the other British possessions. By postponing action until now it has been possible to take advantage of the consolidation of the English Statutes which the Patents and Designs Act, 1907, has effected. The present appears therefore to be a very opportune time for undertaking legislation in India. (*Ibid.*) E

(6) Procedure under Act V of 1888.

The existing procedure in India under Inventions and Designs Act, 1888, for obtaining an exclusive privilege is somewhat as follows. The inventor submits to the Governor General in Council an application accompanied by the prescribed fee and containing a description of the invention. The title of the invention is notified in the Gazette of India, and after examination by the Secretary under the Act for the formal matters, the application is exposed to public inspection in the Secretary's Office for ten days, so that any member of the public may have an opportunity of objecting to the grant of leave to file the specification. The application is then further examined by the Secretary more closely to see whether it complies in all respects with the Act, and also, where possible, to see whether the invention is novel. Any objections are also considered by him at this stage. If he finds that the application is in order, leave to file a specification is granted, subject generally to conditions in the case of inventors who are Government servants. Within a period of six months (which may on permission be extended to nine months) the applicant, if he desires to obtain an exclusive privilege, must file six copies of a specification together with a second fee. The specification is then examined by the Secretary to see whether it is substantially identical with the description, drawings and claims in the application. As soon as this identity is secured, the specification is notified as filed as from the date on which it was received and the exclusive privilege accrues from that date. Subject to the payment of further fees, the exclusive privilege may endure for fourteen years, or even with permission for a longer period, but it ceases if any corresponding English or foreign patent lapses. (*Ibid.*) F

(7) *Ibid.*—Drawbacks.

Under the above procedure the public have no proper opportunity of objecting to the grant, as merely a single manuscript copy of the application, which often contains an imperfect description, is available for inspection in Calcutta only during a very limited period. Subsequently, though the exclusive privilege may on application to the High Court be revoked on various grounds, including invalidity and non-novelty, these grounds—which are the natural grounds of defence cannot, except in certain special cases, be pleaded by an alleged infringer as a defence to a suit by an inventor for infringement of his exclusive privilege. (*Ibid.*) G

1.—“The Indian Patents and Designs Act, 1911”—(Continued).

Necessity for the passing of this Act—(Continued).

(8) Modification in procedure—Necessity.

For the sake both of the inventor and the public, it is desirable that the procedure should be simplified and made more direct and effective, not only in regard to the grant of patents but also in respect of their subsequent existence and operation. Further, it seems expedient that the dependence of Indian rights on foreign patents should cease. (*Ibid.*) H

(9) Method of obtaining patent as proposed by the Bill.

By the Bill, as proposed, the method of obtaining a patent for an invention will consist of the following stages :—

- (a) Submission of application and specification at the same time, together with the prescribed fee ;
- (b) Acceptance of the application after complete examination within nine or twelve months ;
- (c) Publication of documents after such acceptance ;
- (d) Interval of three months for submission of objections to grant ;
- (e) Grant of patent, after objections (if any) have been disposed of, on payment of the prescribed fee.

The public will thus be protected by increasing the facilities for opposition at an effective period, while the applicant will be enabled to restrict his claim to what appears to be more properly his invention, thus obviating to some degree his risks in subsequent infringement or revocation proceedings. The applicant will further be protected as his application will be kept secret, which it is not at present, until acceptance. (*Ibid.*) I

(10) Further improvements proposed.

The following further improvements in the law proposed by the Bill may here be enumerated :

- (a) Patents will not lapse on cessation of foreign patents.
- (b) Patents will be granted as being more suitable for commercial purpose than the present certificate that specifications have been filed and fees paid.
- (c) Proprietorship of patents and designs will be more fully recorded.
- (d) Amendment of applications and specifications will be facilitated and opposition there to by the public will be permissible as in the case of the original applications.
- (e) Defendants in infringement suits will be allowed in all cases to use the natural ground of defence by pleading non-validity and non-novelty of the patent.
- (f) Validity of patents will be certified in certain cases to give protection against willful infringement.
- (g) Threats of legal proceedings will be actionable unless the patentee proceeds diligently with an infringement suit.
- (h) Anomalies in respect of British inventors will be removed and arrangements will be made for the mutual protection of inventions and designs between India and other British possession and between India and Foreign States.

1.—“The Indian Patents and Designs Act, 1911”—(Concluded).

Necessity for the passing of this Act—(Concluded).

- (i) Compulsory licenses for the working of inventions will be obtainable on more clearly defined and broadened grounds than formerly.
- (j) Surrender of patents and restoration of ceased patents will be permissible.
- (k) The law as to designs, which now follows the Statute of 1883, will be brought into line with the Statute of 1907.
- (l) Finally, a Controller of Patents and Designs will be established, with power to dispose of many matters which are at present referred to the Governor-General in Council. (*Ibid.*) J

(11) Bill following the English Act of 1907.

Generally speaking, the provisions of the Bill follow with the necessary modifications those of the Inventions and Designs Act, 1907, only such provisions of the Act of 1888 being retained as appear necessary to meet special conditions of India. The proposals contained in the Bill will enable the attainment of the double object of encouraging the inventor, and of giving more effective protection both to him and to the public. (*Ibid.*) K

(12) Points of importance that should obtain in any enactment for the protection of inventions and designs.

“These are the encouragement of the inventor and the protection of the public. The first of these requires that the method of obtaining patent rights should be made as simple as possible, the number of intermediate steps which have to be taken before a patent is granted should be reduced to a minimum and at the same time the protection granted should be adequate. The second point is perhaps even more important. It is necessary to see that protection is not given where it is not due, and that the rights and liabilities of other inventors and of the public are not infringed.” And every clause in the Bill has been drafted keeping in mind one or other of these principles. (*See Proceedings in Council.*) L

PRELIMINARY.

Short title, extent
and commencement.

1. (1) This Act may be called the Indian Patents and Designs Act, 1911.

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas; and

(3) It shall come into force on the first day of January 1912.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “Advocate General” includes a Government Advocate:—

(2) “Article” means (as respects designs) any article of manufacture and any substance, artificial or natural, or partly artificial and partly natural:

(3) “Controller” means the Controller of Patents and Designs appointed under this Act:

(4) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered :

(5) "design" means any design applicable to any article, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical or chemical, separate or combined, but does not include any trade or property mark as defined in sections 478 and 479 of the Indian Penal Code :

XLV of 1860.

(6) "District Court" ¹ has the meaning assigned to that expression by the Code of Civil Procedure, 1908 :

V of 1908.

(7) "High Court" ² has the meaning assigned to that expression by the Code of Criminal Procedure, 1898, in reference to proceedings against European British subjects :

(8) "invention" ³ means any manner of new manufacture and includes an improvement and an alleged invention :

(9) "legal representative" ⁴ means a person who in law represents the estate of a deceased person :

(10) "manufacture" ⁵ includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture :

(11) "patent" ⁶ means a patent granted under the provisions of this Act :

(12) "patentee" ⁷ means the person for the time being entitled to the benefit of a patent :

(13) "prescribed" includes prescribed by rules under this Act : and

(14) "proprietor of a new and original design,"—

(a) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed ; and

(b) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired ; and

(c) in any other case, means the author of the design ;

and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

(Notes).

1.—“ District Court. ”

District defined.

“ District ” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “ District Court ”), and includes the local limits of the ordinary original civil jurisdiction of a High Court: [S. 2 (4), C P O., 1308]. M

2.—“ High Court. ”

High Court—Meaning.

“ High Court ” means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Punjab and the (Chief Court of Lower Burma.) [S. 4, (J), Cr. P. C. 1898]. N

3.—“ Invention. ”

(1) Invention—Meaning.

- (a) In S. 46 of the Patent Designs and Trade Marks Act of 1888 “ invention ” is defined to mean any manner of new manufacture the subject of letters patent and grant of privilege within S. 6 of the Statute of Monopolies, and includes an alleged invention. 17 A. 490 (498). O
- (b) There may be a valid patent for a new combination of materials previously in use for the same purpose or for a new method of applying such materials. *Hill v. Thompson and Foreman*, 3 Mer. 622; 1 Webb, P.C. 229, cited in 17 A. 490 (494). P
- (c) *Crane v. Price*, (1 Web. P.C. 303) where it was laid down that if the result produced by a combination of a particular kind were either a new article or a better article or a cheaper article to the public than that produced before by the old method, such combination is an invention or manufacture intended by the statute and may well become the subject of a patent. 17 A. 490 (494). Q
- (d) Although an “ invention ” includes an improvement, it does not by any means follow that every improvement is an invention, it is impossible to lay down any hard-and-fast rule as to what improvements should be considered to be inventions. (*Ibid.*) R
- (e) To justify the grant of the exclusive privilege of a patent, there must be a certain amount of invention or invention faculty displayed. (*Ibid.*) S
- (f) It will be a question for the Court to determine whether the amount of inventive power displayed is such as to justify the grant of a patent. (*Ibid.*) T
- (g) Although every invention may be said to be a “ combination ” of some kind, it by no means follows that every “ combination ” deserves to be called an invention. (*Ibid.*) U

(2) Invention—New manufacture.

The term invention as used in the Act must be taken to mean new manufacture. 23 C. 702 (709). Y

(3) Invention and Discovery.

An invention is different from a discovery, and a discovery is not the subject-matter for a patent unless it is an addition not only to knowledge, but

3.—“*Invention*”—(Concluded).

to known invention, and produces either a new and useful thing or result, or a new and useful mode of producing an old thing or result. Per *Lindsley, J. in Lane Fox v. Kensington &c., K. Elec. Light Co.* (1892), 2 Ch. 428. W

4.—“*Legal representative.*”(1) *Legal representative—English Law.*

(a) In English Law the term primarily denotes executor and administrator, 8 C.W.N. 843. X

(b) In English Law though the term may be regarded as primarily denoting “executor or administrator,” that meaning may be controlled by the context. Thus, in certain cases it has been held to mean “next-of-kin,” 8 C.W.N. 843 (850). Y

(c) Both in English and Indian Law, cases have arisen in which the term “legal representative” cannot be strictly confined to its primary meaning. 8 C.W.N. 843 (851). Z

(2) *Legal representative—Literal meaning.*

The term “legal representative” in its strictest and most ordinary sense means, executors and administrators only. 8 C.W.N. 843 (856). A

(3) *Legal representative—Meaning extended by judicial decisions.*

Judicial decisions have extended the term “legal representative” beyond that of its ordinary meaning of “administrator, executor, and heir.” The term now includes any person, who, in law, represents the estate of a deceased person. 8 C.W.N. 843 (858). B

5.—“*Manufacture.*”**Manufacture—Process.**

.. (a) Manufacture is thus defined :—“Manufacture includes any act, process, or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture.” 23 C. 702 (709). C

(b) It is contended on behalf of the petitioner here, that the term manufacture cannot apply to the process alone, but means the process taken together with the article produced thereby, and that therefore the term invention cannot be confined to the process only. 23 C. 702 (709). D

On the other hand, it is said that the definition of the term manufacture was intended to draw a distinction between the case of the invention of a new substance or article and the invention of a new process or method of producing an old substance and that where an old substance like *sheelac* is produced by a new process, then it is the new process which is the new manufacture, whereas when a new substance is produced then it is the new substance or new article which is the new manufacture. (*Ibid.*) E

It is not perhaps necessary to express a final opinion on these points, though the Court inclined to think that reading the definition of the term “manufacture” in the light of the English authorities, it was intended that, when an old or known substance is produced in a new way by a newly discovered art or process, then the term manufacture may be applied to the new process. (*Ibid.*) F

5.—“*Manufacture*”—(Concluded).

In the case of *Wood v. Zimmer*, (Holt, 58) it was held that where a patent had been granted for a new mode of making *verdigris*, and it appeared that previous to the patent being granted the articles had been publicly vended by the patentee himself, the patent was void. In a note to the case at p. 65 the learned author discusses the meaning of the word “manufacture” as used in the Statute of James, and he makes the following observation; “When the effect produced is some new substance or composition of things, the patent ought to be for such new substance or composition without regard to the mechanism or process by which it is produced; when the effect produced is no new substance, the patent can only be for the mechanism if new mechanism be used, or for the process, if it be a new method of operating with or without old machinery by which the effect is produced.” He then quotes a dictum of *Eyre, C.J.*, in *Boulton and Watt*; “New methods of manufacturing articles in common use may be said to be new manufactures in one of the common acceptations of the words. Three-fourths of the patents granted since the Statute are for methods of operating and of manufacturing, producing no new substance and employing no new machinery.” (*Ibid.*) G

Semble:—The term “new manufacture” or invention might be applied to a process only. (*Ibid.*) H

6.—“*Patent.*”

(1) Patent—Definition.

A Patent right is a privilege granted by the Crown to the first inventor of any new manufacture or invention that he and his licensees shall have the sole right, during the term of 14 years of making and vending such manufacture or invention.

(2) India, Law in.

In India, the Patents and Designs Act, 1911, governs suits relating to patents. I

(3) Requisites of valid patent.

(i) NEW MANUFACTURE.

The subject-matter of a patent can only be some new ‘manufacture.’ The word ‘manufacture’ not only comprehends productions, but it also comprehends the means of producing them. Therefore, in addition to the thing produced, it will comprehend a new machine or a new combination of machinery, it will comprehend a new process or an improvement in an old process *Per Lord Westbury in Ralston v. Smith*, 11 H.L. 246). II

(ii) NOVELTY.

The subject-matter should be novel. If the public once become possessed of an invention by any means whatever, no subsequent patent for it can be granted either to the first inventor or any person (*Patterson v. Gas Light Co*, 3 App. Cas. 244). J

(iii) “UTILITY.”

Utility, in patent law, does not mean either abstract utility, or comparative utility, or commercial utility. *Welsbach Incandescent Gas Light Co. v. New Incandescent (Sunlight Patent) Gas Lighting Co.*, 69 L.J., Ch. 343; (1900) 1 Ch. 848, 82 L.T. 293; 48 W.R. 362; 16 T.L.R. 205; 17 Rep. Pat. Cas. 287—*Buckley, J.* K

6.—“Patent” —(Concluded).

An invention is useful if it provides a thing better in some respects though worse in others than what is already known. Thus, a mode of producing illuminant appliances more durable than those previously known, or which offers to the public a new choice of materials to be used in the production of illuminant appliances is patentable, although the new appliance is less illuminant than the old one. (*Ibid.*) L

(iv) INGENUITY.

The subject-matter should have an amount of ingenuity.

7.—“Patentee.”

(1) Patentee, Who is a.

(a) The patentee must be the true and first inventor.

(b) If he has acquired the knowledge of the invention in a foreign country and introduced it into British dominions still he will be looked upon as the first inventor. *Lewis v. Marling*, 10 B. & C. 22. M

(2) Duty of patentee.

A patentee must at least take the same pains to develop a new industry here as he does abroad, and must be able to show, if the industry be not worked in this country, that it could not have been so worked at a profit by a fair use of his monopoly as between home and foreign trade, or the expenditure in developing a foreign industry, not merely that it could not, at the time of the application, be started here with any chance of profit. And a patent may be revoked for an abuse of the monopoly conferred by it, although the revocation will not lead to the establishment of a new industry here or the further development of an existing one. *Hatschek's Patents, In re*; *Zerrenner, Ex parte*, 78 L.J. Ch. 402; (1909) 2 Ch. 68; 100 L.T. 809; 26 Rep. Cas. 228; 25 L.T. 457—*Parker, J.* N

PART I.

PATENTS.

Application for and Grant of patent.

3. (1) An application for a patent may be made by any person whether he is a British subject or not, and whether alone or jointly with any other person.

(2) The application must be made in the prescribed form, and must be left at the Patent Office in the prescribed manner.

(3) The application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor¹ or the legal representative² or assign³ of such inventor and for which he desires to obtain a patent⁴ and must be accompanied by a specification and by the prescribed fee.

(4) Where the true and first inventor is not a party to the application, the application must contain a statement of his name, and such particulars for his identification as may be prescribed, and the applicant must show that he is the legal representative or assign of such inventor.

(Notes).**1.—“ True and first inventor.”****True and first inventor.**

- (a) The communication, made in England by one British subject to another, of an invention, does not make the person to whom the communication is made the first and true inventor, within 21 Jac. 1, c. 3, so as to enable him to take out letters patent for the invention. *Marsden v. Saville Street Foundry*, 3 Ex. D. 208. **O**
- (b) The adoption by an inventor of a suggestion made in the course of experiments of something calculated more easily to carry his conceptions into effect, does not affect the validity of the patent. *Allen v. Rawson*, 1 C.B. 551. **P**

2.—“ Legal representative.”**Definition.**

For the——of the expression “ Legal representative,” see S. 2. **P-1**

3.—“ Assign.”**Assign—Meaning.**

In the repealed Act V of 1889, the term “ assign was defined thus—“ Assign includes a grantee of the exclusive privilege of making, selling or using an invention, or of authorizing others so to do.” 23 C. 702 (708). **Q**

The word “ assign ” held clearly to refer to an assign of the entire title and interest of the inventor, and not to an assign of a share. 22 C. 709. **R**

4 —“ For which he desires to obtain a patent.”**PATENT—FOR WHAT GRANTED.****I. New inventions.****(1) Inventions must be new and useful.**

An invention must be both new and useful, and not confined to the knowledge of the party making it, to be the subject of a patent. *Hill v. Thompson*, 2 Moore, 424; 8 Taunt, 375; Holk 636; 3 Mer 629; 20 R.R. 488; 17 R.R. 156. **S**

(2) Results of mechanism—Improved result.

A patentee is entitled, not merely to the mechanism described in his specification and thereby claimed as his invention, but also to the results produced by that mechanism, however obtained. The attainment of a better result than had been previously attained constitutes a new result, so as to make an instrument a new invention within the authority of *Curtis v. Platt* (35 L.J., Ch. 852) and *Procter v. Bennis* (36 Ch D. 740), as distinguished from an improvement of an old and known instrument. *Thompson v. Moore*, 23 L.R. Ir. 599. **T**

(3) New principle with novel application.

The discoverer of a new principle or new idea as regards any art or manufacture, who shows a mode of carrying it into practice, as by a machine, may patent the combination of principle and mode, although the idea or the machine would not alone be the proper subject of a patent. *Otto v. Linford*, 46 L.T. 35. **U**

(4) Old principle, novel application of.

- (a) If, having a particular purpose in view, a person takes the general principles of mechanics, and applies one or other of them to a manufacture

4.—“For which he desires to obtain a patent”—(Continued).

PATENT—FOR WHAT GRANTED—(Continued).

I. New inventions—(Continued).

to which it has not been applied, this is a sufficient ground to warrant an application for a patent, assuming such manufacture to be new, desirable and of public utility. *Dangerfield v. Jones*, 13 L. T. 142. Y

(b) An arrangement of apparatus so constructed as to bring into operation a well-known dynamic agent, so as to produce a useful effect for a particular result constitutes an invention of a combination for which a valid patent may be granted. *Cannington v. Nuttall*, 40 L.J., Ch. 789; L.R. 5 H.L. 205. W

(c) To adopt a combination of machinery or arrangement of apparatus originally directed to one purpose, and to use it for another and additional purpose, is an infringement of the patent which first introduced that combination or arrangement. (*Ibid.*) X

(d) The new application of any means or contrivance may be the subject of a patent, if it lies so much out of the tract of the former use as not naturally to suggest itself, but to require some application of thought and study. *Fenn v. Bibby*, 36 L.J. Ch. 455; L.R. 2 Ch. 127; 15 L.T. 399; 15 W.R. 208. Y

(e) A claim for a patent for improvements in the mode of doing anything by a known process is sufficient to entitle the claimant to a patent for his improvements when applied either to the process as known at the time of the claim or to the same process altered and improved by discoveries subsequently published so long as it remains the same with regard to the improvements claimed and their application. *Electric Telegraph Co. v. Bret*, 10 C.B. 838; 20 L.J.C.P. 123; 15 Jur. 579. Z

(f) An invention is not the same thing as a discovery; and if a man does nothing more than discover that a known machine can produce effects which no one before him knew could be produced by it, his discovery, however great and useful, is not a patentable invention. To entitle a patentee to maintain his patent, he must make some addition not only to knowledge but to previously known inventions; and must produce either a new and useful thing or result or a new and useful method of producing an old thing or result. *Lane Fox v. Kensington Electric Light Co.*, (1892) 3 Ch. 424. A

(g) The discovery that a known thing can be employed for a useful purpose for which it has never before been used is not alone a patentable invention; but the discovery how to use such a thing for such a purpose will be a patentable invention if there is novelty in the mode of using it as distinguished from novelty of purpose; or if any new modification of the thing, or any new appliance, is necessary for using it for its new purpose, and if such mode of use, or modification, or appliance involves any appreciable merit. § (*Ibid.*) B

(h) A patent for the mere use of a known contrivance without any additional ingenuity in overcoming fresh difficulties is bad and cannot be supported. But a patent for a new use of a known contrivance is good, if the new use involves practical difficulties which the patentee has been the first to see and overcome. *Gadd v. Manchester Corporation*, 67 L. T. 569. C

4.—“For which he desires to obtain a patent”—(Continued).

PATENT—FOR WHAT GRANTED—(Continued).

I. New inventions—(Continued).

(5) Invention already known in part.

- (a) The application of a known article to a new use, the mode of application not being new, cannot be the subject of a patent. *Reg v. Cutler*, 3 Car. and K. 215; 14 Q. B. 372, n. D
- (b) Before the date of the plaintiff's patent, it was known that hydrated oxides of iron would absorb sulphuretted hydrogen; but it was not known that they could be practically used in hydrogen. *Held*, that a patent might be had for applying hydrated oxides to absorb sulphuretted hydrogen from coal gas. *Hills v. London Gaslight Co.*, 5 H. and N. 312; 29 L. J. Ex. 409. E
- (c) It was also known that sulphuret of iron produced by the action of sulphuretted hydrogen upon hydrated oxide of iron, would be re-oxidised by being exposed to the action of atmospheric air. But it was not known that when the sulphuret was produced by exposure of hydrated oxide of iron to the action of sulphuretted hydrogen mixed with coal gas, the re-oxidation of the iron might not be prevented by the cyanogen, compounds of ammonia, and tarry matter which would be mixed with it:—*Held* that a patent might be had for re-oxidising the iron by exposure to the air after it had been used in the purification of coal gas. (*Ibid.*) F
- (d) An invention, consisting in no more than the use of things already known, and acting with them in a way already known, and producing effects already known, but producing those effects, so as to be more economically or beneficially enjoyed by the public is properly the subject-matter of a patent. *Grane v. Price*, 5 Scott (N.R.) 338; 4 Man and G. 586; 12 L.J.C.P. 81. G
- (e) The discovery that a particular advantage may be attained by the use of a machine known before, in a manner known before, is not an invention which can be made the subject of a patent. *Tatley v. Easton*, 2 C.B. (N.S.) 706; 26 L.J.C.P. 269. H
- (f) A patent cannot be taken out for one particular use of a known machine, though the patentee may have discovered how to use the machine more beneficially than the owner. *Ralston v. Smith*, 11 H.L.Cas. 223; 20 C.B. (N.S.) 28; 35 L.J., C.P. 49; 13 L.T. 1. I
- (g) The employment of hydrate of lime for the purpose of precipitating the animal and vegetable matter contained in sewage water and so producing an agricultural manure, is a good subject matter for a patent. *Higgs v. Goodwin*, El., Bl. and El. 529; 27 L.J. Q.B. 421; 5 Jur. (N.S.) 97. J
- (h) When a thing has once been used for a certain purpose, no patent is valid for applying that thing to a similar but not an identical purpose. *Jordan v. Moore*, 35 L.J.C.P. 268; L.R. 1 C.P. 624; 12 Jur. (N.S.) 766; 14 W.R. 769. K
- (i) A patent granted for constructing vessels of an iron frame covered with a wooden planking, when before its date vessels had been built of iron or of iron and wood combined, is invalid. (*Ibid.*) L

4.—“ For which he desires to obtain a patent ”—(Continued).

PATENT—FOR WHAT GRANTED—(Continued).

I.—New inventions —(Concluded).

- (j) Where an invention consists of the discovery of particular means for attaining a result, which result is already perfectly well-known, the invention is only for the means; and the invention of one set of particular means does not interfere with the invention of another set of means to the same end, provided that the two sets of means are distinct, and the latter does not involve a colourable imitation of the former, or an incorporation of the former with additions. *Curtis v. Platt*, 11 L.T. (N.S.) 245. **M**
- (k) Where there are two things similar in form used for a similar object, and capable of the same application, one of them having been known to mechanics, the introduction of the other into use will not constitute a good ground for a patent. *Harwood v. G.N.Ry.*, 11 H.L.Cas. 654; 55 L.J., Q.B. 27; 12 L.T. 771; 14 W.R. 1. **N**
- (l) A slight difference in the mode of application is not sufficient for such a purpose, nor will it be sufficient to take a well-known mechanical contrivance and apply it to a subject to which it has not been hitherto applied. (*Ibid.*) **O**
- (m) Hoops of whalebone, cane, and other substances, suspended from the waist and forming a petticoat, had long since been used by ladies. A person took out a patent for using, for the same purpose, hoops made of steel watch springs: *Held*, that this was not an invention which could properly be made the subject of a patent. *Thompson v. James*, 32 Beav. 570. **P**
- (n) The application of a known article to a purpose analogous to that which it had before been applied, is not the subject of a patent, although the result of the application may be the production in a cheaper and a better manner of a known article. *Horton v. Mabon*, 12 C.B. (N.S.) 487; 31 L.J.C.P. 255; 6 L.T. 289; 10 W.R. 502. *Affirmed*, 16 C.B. (N.S.) 141; 9 L.T. 815. **Q**
- (o) Therefore a double angle iron being a well-known article, the application of it in the construction of the hydraulic cap joints of gas-holders instead of constructing them by rivetting two pieces of single angle iron to a plate, is not the subject of a patent. (*Ibid.*) **R**
- (p) The application of a known process to a new article, the mode of application not being new, cannot be the subject of a patent. *Brooke v. Aston*, 8 El. & Bl. 478; 27 L.J., Q.B. 145; 4 Jur. (N.S.) 279; 6 W.R. 42. *Affirmed*, 28 L.J., Q.B. 175; 5 Jur. (N.S.) 1025. **S**
- (q) But this principle does not apply where the process is chemical. *Young v. Fernie*, 4 Giff. 577; 10 Jur. (N.S.) 926; 10 L.T. 861; 12 W.R. 901. **T**
- (r) The application of a well-known tool to work previously untried materials or to produce new forms, is not the subject of a patent. *Bottle Envelope Co. v. Seymour*, 5 C.B. (N.S.) 164; 28 L.J.C.P. 22; 5 Jur. (N.S.) 174. **U**
- (s) An old mode of operation, more extensively than hitherto applied to a well-known article, does not afford a ground on which to grant a patent. *Ormonson v. Clark*, 13 C.B. (N.S.) 337; 32 L.J.C.P.C. 9 Jur. (N.S.) 749; **V**

4.—“For which he desires to obtain a patent”—(Continued).

PATENT—FOR WHAT GRANTED—(Continued).

I.—New inventions—(Continued).

7 L.T. 361; 11 W.R. 118. *Affirmed*, 14 C.B. (N.S.) 475; 33 L.J. C. P. 291; 10 Jur. (N.S.) 128; 11 W.R. 787. Y

(d) Casting in iron an article which has never been cast before, if no new method of casting is adopted in the process, is not the subject of a patent. (*Ibid.*) W

(u) A patent is not invalid because part of the invention claimed has been anticipated, so long as there is sufficient amount of utility and advantage to be derived from what remains after striking out the part so anticipated; and in such a case the remaining part is a proper subject for the grant of letters patent. *Frearson v. Loe*, 9 Ch. D. 48; 27 W. R. 188. X

(v) Where a patent is taken out for an invention, consisting of two distinct parts, one of which is not new, the whole is void. *Kay v. Marshall*, 5 Bing. (N.C.) 492; 7 Scott, 548; 2 Arn. 78; 8 L.J.C.P. 261, S.C. 1 Beav. 535; in Dom. Proc., 8 Cl. & F. 245; West 682; 5 Jur. 1028. Y

(w) Before the grant of the plaintiff's patent the reach in spinning machines varied from less than an inch, to thirty-six inches according to the length of the fibre of the material. The plaintiff discovered a new and improved mode of preparing flax and other fibrous substances, in which process the fibre became shortened, and the length of the reach in spinning it was necessarily diminished. The plaintiff obtained a patent first for thus preparing the flax and other fibrous substances; and, secondly for spinning it at a shorter reach than had been done before—namely, at two and a half inches:—*Held*, that the second part of the patent could not be supported and that the patent was therefore invalid. (*Ibid.*) Z

(x) If a patent is taken out for several inventions, and one of them is not an improvement, the patent is altogether void. *Morgan v. Seward*, 2 M. and W. 544; M & H 55; 6 L.J. Ex. 158; 1 Jur. 527. A

(y) A patent being granted upon a specification that the machine was capable of performing all the operations necessary to the perfection of the proposed invention; and it appearing that a second patent was taken out for improvements necessary to the efficient operation of the original machine:—*Held*, that the consideration of the first patent having failed both patents were void. *Bloxam v. Elsee*, 9 D. & R. 215; 6 B. & C. 169; 1 Car. & P. 558; R. & M. 187; 5 L.J. (O.S.) K.B. 104; 80 R. R. 275. B

(z) When a machine for which a patent had been granted was shown to produce work more expeditiously, more economically, and of a better quality than any previous machine:—*Held*, that the patent could not be invalidated on the ground that the machine was formed by the mere arrangement of common elementary mechanical materials, producing results of the same nature as those previously accomplished by other mechanical arrangements and construction. *Murray v. Clayton*, L.R. 7 Ch. 570; 20 W.R. 649. C

(aa) If the shearing of cloth from list to list by shears is known, and the shearing it from end to end by means of rotatory cutters is also known, and a person constructs a machine to shear from list to list by means of

4.—“For which he desires to obtain a patent” —(Continued).

PATENT—FOR WHAT GRANTED—(Continued).

I.—New inventions—(Continued).

rotatory cutters: this is a new invention. *Lewis v. Davis*, 3 Car. & P. 502. D

(bb) An addition to an old invention may be the subject of a patent. *Hornblower v. Boulton*, 8 Term. Rep. 95; 3 R. R. 439. E

(cc) Where something remains to be ascertained which is necessary for the useful application of the discovery, that affords sufficient room for another valid patent. *Hills v. Evans*, 4 De. G.F. & J. 288; 31 L.J. Ch. 457; 8 Jur. (N.S.) 525; 6 L.T. 90. F

(dd) Patent granted for an improved steam-engine, as not infringing upon an existing patent. If the improvements could not be used without the engine, for which a patent had been granted, they must wait the expiration of that patent. *Fox, Ex parte*, 1 Ves. & B. 67. G

(5) Useful application of known unproductive article.

(a) The law recognises the right of an inventor who finds out and supplies for commercial purposes an article known previously only as a chemical curiosity. *Young v. Fernie*, 4 Giff. 577; 10 Jur. (N.S.) 926; 10 L.T. 861; 12 W.R. 901. H

(b) The invention or discovery of a means of producing in abundance, suitable for economical and commercial purposes, an article previously known and obtainable in minute quantities only is a good subject of a patent. (*Ibid.*) I

(c) The principle laid down in *Brooke v. Aston*, (4 Jur. (N.S.) 279; 5 Jur. (N.S.) 1025), that the mere application of a known process to a new article, the mode of application not being new, is not a good subject of a patent, does not supply where the process is chemical. (*Ibid.*) J

(7) Where part of invention new but immaterial.

A patent was taken out for improvements in making buttons. The specification stated the improvement to consist in the substitution of a flexible material for metal shanks, and it described the mode in which this material might be fixed to the intended button, and made to project from it in the necessary condition for use, by the help of a metal collet or ring with teeth. Neither the construction of the button, nor the application of the flexible shank, was new: the use of the toothed ring, as described in the specification, was so, but this was not stated to be the subject-matter of the invention; and it appeared by the specification, that the effect produced by it might be brought about in other modes, which the patentee had also used:—*Held*, that the patent was not maintainable, since the invention consisted only in combining two things which were not new, and the use of the toothed ring in forming the flexible shank, though new, was not the object of the invention, but only a mode, among others which were already known, of carrying it into effect. *Saunders v. Aston*, 3 B. & Ad. 881; 1 L.J. K.B. 285. K

(8) Examples of patentable invention.

(a) A patent for the method of lessening the consumption of steam and fuel in fire-engines is a subject of a patent. *Hornblower v. Boulton*, 8 Term. Rep. 95; 3 R.R. 439. And see *Boulton v. Bull*, 2 H. Bl. 463, 500; 3 R.R. 439. L

4.—“For which he desires to obtain a patent”—(Continued).

PATENT—FOR WHAT GRANTED—(Continued).

I.—New inventions—(Concluded).

- (b) A patent for an improvement in the manufacture of iron by the application of anthracite or stone, coal and culm, combined with the using of the hot air blast in the smelting and manufacture of iron from iron stone mine or ore, is a new invention. *Crane v. Price*, 5 Scott (N.E.) 388; 4 Man. and G. 586; 12 L.J.C.P. 81. **M**
- (c) A patent for an improvement or improvements in the making or manufacturing or elastic goods or fabrics, and the production of cloth from cotton, flax of other suitable material, not capable of felting, in which are interwoven elastic cords or strands of India rubber, coated or wound round with a filamentous material, is properly the subject-matter of a patent. *Cornish v. Keene*, 4 Scott. 387; 3 Bing. (N.C.) 570; 2 Hodges, 281; 6 L.J., C.P. 225. **N**
- (d) A patent for certain improvements on, or additions to, the apparatus or parts constituting what are called braiding or plaiting machines, whereby the inventor was enabled to produce by such machines elastic and non-elastic braids and other fabrics, with elastic or non-elastic strands, yarns or threads introduced lengthwise of the fabric, and four or more in the same surface or plane, or mixtures of elastic or non-elastic fibres in combination in the same fabric, is a novel invention. *Nickels v. Ross*, 8 C.B. 679. **O**
- (e) A patent for improvements in looms for weaving by means of the clutch box is novel. *Sellers v. Dickinson*, 5 Ex. 312; 20 L.J. Ex. 417. **P**
- (f) The application to a globular lamp of a sliding door instead of a hinged one cannot be the subject of a patent. *Parkes v. Stevens*, L.R. 5 Ch. 96; 22 L.T. 635; 18 W.R. 233. **Q**
- (g) The adaptation of a sliding door to a spherical lamp, sliding doors having previously been applied to cylindrical lamps and to other glazed surfaces, cannot of itself be the subject of a patent. (*Ibid.*) **R**
- (h) A patent for procuring colouring matters for dyeing and painting by a chemical process held valid. *Badische Anilin and Soda Fabrik v. Levinstein*, 12 App. Cas. 710; 57 L.T. 853. **S**

II. New Combination.

Principle.

A patent for a new combination or arrangement is entitled to the same protection on the same principles as any other patent. *Clark v. Adie*, 45 L.J. Ch. 228; 3 Ch. D. 184; 35 L.T. 949; 24 W.R. 1007. **T**

III. Prior publication and user.

By patentee.

- (a) A person, to be entitled to a patent for an invention must be the first and true inventor, and there must not be any public use thereof by himself or others, prior to the grant of the patent. *Housebill Coal Co. v. Neilson*, 9 Cl. and F. 789. **U**
- (b) Trials of an incomplete invention, by way of experiment, are not evidence of a prior use for the purpose of invalidating a patent. Prior use for this purpose, means public use and exercise of the invention, (*Ibid.*) **V**

4.—“For which he desires to obtain a patent” —(Concluded).

PATENT—FOR WHAT GRANTED—(Concluded).

III.—Prior publication and user—(Concluded).

- (c) Evidence of the existence of a completed invention, once in public use, although abandoned, or the use long discontinued but not altogether lost sight of is sufficient to invalidate a patent which is subsequently granted for the same invention. (*Ibid.*) **W**
- (d) The prior use of an invention which invalidates a patent is a use by persons in carrying on their trade and without concealment. *Heath v. Smith*, 2 C.L.R. 1584; 3 Ell. and Bl. 256; 23 L.J.Q.B. 166; 18 Jur. 601; 2 W.R. 200. **X**
- (e) The prior deposit of articles of novel manufacture in a warehouse, for sale is a sufficient publication to defeat a patentee's claim to novelty in the invention of similar articles. *Mullins v. Hart*, 3 Car. and K. 297. **Y**
- (f) The public use and exercise of an invention which prevents it from being considered a novelty, is a use in public, so as to come to the knowledge of others than the inventor, as contradistinguished from the use of it by himself in private, and does not mean a use by the public generally. *Carpenter v. Smith*, 9 M. and W. 300; 11 L.J. Ex. 213. **Z**
- (g) What previous user will invalidate, and what user, if any, can be admitted in a contravention of the patent right, are different questions, depending one upon the extent of previous knowledge, the other upon the effect of the grant. *Caldwell v. Vanvliessen*, 9 Hare, 428; 21 L.J. Ch. 97; 16 Jur. 115. **A**
- (h) A contractor for harbour works had in the progress of his undertaking invented an apparatus which greatly facilitated the works, but which could only be tested in a place accessible to the public. After having used the apparatus for four months in the progress of the work, he applied for a patent:—*Held*, that such user amounted to a dedication to the public, and that he was not entitled to a patent. *Adamson's Patent, In re*, 6 De G. M. and 420; 25 L.J. Ch. 456; 4 W. R. 473. **B**
- (i) A first and original inventor means a person who could claim the merit of the first invention without reference to the user. *Honiball's Patent, In re*, 9 Moore P.C. 378. **C**

4. (1) The specification must particularly describe and ascertain the nature of the invention and the manner in which the same is to be performed.
Specification.¹

(2) Where the Controller deems it desirable, he may require that suitable drawings ² shall be supplied with the specification, or at any time before the acceptance of the application, and such drawings shall be deemed to form part of the specification.

(3) The specification must commence with the title, and must end with a distinct statement of the invention claimed.

(4) If in any particular case the Controller considers that an application should be further supplemented by a model or sample of anything

illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the acceptance of the application, but such model or sample shall not be deemed to form part of the specification.

(Notes).

1.—“Specification.”

I. Construction.

(1) Specification—Method of construction.

- (a) The words of a specification are to be construed according to their ordinary and proper meaning, unless there is something in the context (which may be explained by evidence) to show that a different construction ought to be made. *Elliott v. Turner*, 2 C.B. 446; 15 L.J. C.P. 49. D
- (i) Where two specifications of different dates, relating to the same external objects, contain terms of art, though the expressions used in both are identical, their construction cannot be declared to be the same without the meaning and use of the terms of art employed therein being first ascertained by evidence, and being shown to be the same at the date of both the specifications. *Betts v. Mensies*, 10 H.L. Cas. 117; 81 L.J.Q.B. 233; 9 Jur. (N.S.) 29; 7 L.T. 110; 11 W.R. 1. E
- (c) The words used in a patent must be construed like the words of any other instrument, in their natural sense, according to the general purpose of the instrument in which they are found. *Clark v. Adie*, 46 L.J. Ch. 598; 2 App. Cas. 423; 37 L.T. 1; 25 W.R. 45. F
- (d) In the case of a patent for improvements, prior specifications relating to similar machines are admissible in evidence to show the state of the manufacture at the time when the patent was granted, but not to show that the language of the specification is to be taken in other than its natural meaning. *Clark v. Adie*, 46 L.J. Ch. 598; 2 App. Cas. 423; 37 L.T. 1; 25 W.R. 45. G
- (e) A specification is to be understood according to the acceptance of practical men at the time of its enrolment. *Crossley v. Beverley*, 9 B. & C. 63; M. & M. 283; 3 Car. & P. 513; 7 L.J. (O.S.) K.B. 127; 1 Russ. & M. 166. H
- (f) The rules governing the construction of specifications are the ordinary rules for the interpretation of written instruments; but, unless a specification particularly describes the nature of an invention, and in what manner the same is to be performed, in such a manner as to be intelligible to a workman of ordinary knowledge, the grant of the letters patent is void. *Simpson v. Holliday*, 12 L.T. 99; 13 W.R. 577; 80. in H.L. 35 L.J. Ch. 811; L.R. 1 H.L. 315. I

(2) *Ibid.*—Construction.

- (a) Where want of novelty in a patented invention is set up and the alleged anticipation is in writing alone, the interpretation of the prior writing for the Court. *Otto v. Linford*, 46 L.T. 35. J
- (b) The question of novelty of invention, when raised by the comparison of two specifications, is a question of law for the Court, if the two specifications do not contain expressions of art and commerce, the meaning of which must be explained by evidence. *Thomas v. Foxwell*, 5 Jur. (N.S.) 87. *Affirmed*, 6 Jur. (N.S.) 271. K

I.—“Specification”—(Continued).

I.—Construction—(Concluded).

(8) Evidence.

Evidence is admissible to show the state of a manufacture at the time, but not to vary the language of a specification. *Clark v. Adie, supra.* **L**

II. Title of invention.

(1) Nature.

The title describing a patent to be for a certain invention of a “new or an improved method of obtaining the spontaneous reproduction of all the images received in the focus of the camera-obscura,” is sufficiently precise and certain. *Beard v. Egerton*, 3 C.B. 97; 15 L.J. Q.P. 270; 10 Jur. 643. **M**

(2) Title must not be inconsistent with the specification.

(a) The title of a patent must (though not as minutely as the specification) describe the nature of the invention; and the patent is void if the title is so generally worded as to be capable of comprising, not only the particular invention, but improvements not contemplated in it; as where the patent was taken out for improvements in carriages, and the invention was, in fact, an improvement in German shutters, which were used only in some kinds of carriages. *Cook v. Pearce*, 8 Q.B. 1044; 13 L.J. Q.B. 189; 8 Jur. 499. **N**

(b) Where the title is not inconsistent with the specification, and no fraud is practised on the crown or the subject, it is not a fatal objection that the title is so general as to be capable of comprising a different invention from that for which the patent is claimed. (*Ibid*) **O**

(c) The title need not give any idea of the invention; it is sufficient if the specification is consistent with it. *Neilson v. Harford*, 8 M. and W. 806; 11 L.J. Ex. 20. **P**

(d) If it appears that the patent was granted for a different thing from that mentioned in the specification, it is void. *Rex v. Wheeler*, 2 B. and Ald. 345; 20 R. R. 465. **Q**

III. General.

(1) Specification—Objection to form of.

After a patent has stood inquiry and the test of time the Court do not encourage verbal objection to the form of the specification. *Neilson v. Betts*, 40 L. J. Ch. 817; L. R. 5 H. L. 1; 19 W. R. 1121. **R**

(2) *Ibid.*—Sufficiency—Disclosure.

(a) The specification of a patent may describe the process to be adopted so insufficiently as to invalidate the patent and yet disclose enough to show that what is claimed by a subsequent patent is not new. *Betts v. Neilson*, 37 L. J. Ch. 321; L. R. 3 Ch. 429; 18 L. T. 165; 16 W. R. 524. **S**

(b) Whether a specification contains a sufficient description can only be ascertained by experiment; and in making the experiment knowledge and means may be employed which have been acquired since the date of the patent. (*Ibid.*) **T**

1.—“Specification”—(Continued).

III.—General—(Continued).

(3) *Ibid.*—Test of sufficiency.

- (a) The test of a sufficient specification is whether it would enable an ordinary workman, exercising the actual knowledge common to the trade, to make the machine. It need not give information of every detail, but it must not tax invention. *Plimpton v. Malcolmson*, 45 L. J. Ch. 505; 3 Ch. D. 581; 34 L. T. 340. U
- (b) The specification of a patent is bad, if a skilled mechanic would not, without performing a series of experiments be able to construct a machine from the description. *Wegmann v. Corcoran*, *infra*. Y
- (c) Though the grantee of a patent for an invention communicated to him by a foreigner resident abroad is only bound to tell the public all that he himself knows, yet, if the original inventor has not told him enough to enable him so as to describe the invention as that it can be constructed by the aid only of the specification, the patent will be invalid. (*Ibid.*) W
- (d) When a patentee has taken out a fresh patent for improvements on his original invention it is sufficient if, reading his second specification with the first, an artisan would have no substantial difficulty in ascertaining what was claimed. *Parkes v. Stevens*, 38 L. J., Ch. 627; L. R. 8 Eq. 358; 17 W. R. 846. X
- (e) The specification must be sufficient to enable others to make the invention, as the object is that, after the term, the public may have the benefit of the discovery. *Liardet v. Johnson Bull*, N. P. 76; S. P., *Newsbery v. James*, 2 Mer. 446; 16 R. R. 195. Y

(4) *Ibid.*—Sufficiency of.

The owners of a patent for a wheel-rim of a particular shape intended to hold a solid India rubber tyre without pinching or cutting it, and without wires or bands to hold it in its place, claimed the wheel-rim in combination with a tyre fitted into it, but not the tyre without the rim, and brought an action against a firm of India rubber merchants for infringement of their patent. The specification said that the tyre was to be made so as to “approximately fit” the rim; but it appeared that while the base of the rim was flat, the tyre would have to be made convex where it fitted on to the base of the rim, and would also have to be somewhat larger than the base of the rim, and would require to be forced into the rim by machinery:—*Held*, that the specification did not particularly describe and ascertain the nature of the invention, and the manner in which it was performed, and that the patent was therefore bad. *Sirdar Rubber Co. v. Wallington*, 97 L. T. 113; 24 Rep. Pat. Cas. 539. Z

(5) *Ibid.*—Must not be ambiguous.

- (a) A patent is void if the specification is ambiguous or gives directions which tend to mislead the public. *Turner v. Winter*, 1 Term. Rep. 602. A
- (b) A sufficient description of the nature of the invention and the mode of carrying it into effect, so as to enable ordinarily skillful persons to practise and use it at the end of the term for which the patent is granted must be filed with the proper authorities. If the specification

1.—“Specification”—(Concluded).

III.—General—(Concluded).

is ambiguous, insufficient, or misleading, the patent will be void. *Savory v. Price*, R. and M. 1; *Hinks v. Safety Lighting Co.*, 4 Ch. D. 607; *Simpson v. Holliday*, 1 H.L. 315. **B**

- (c) The specification of an invention, which consists in the use of known materials in new proportions, is not necessarily bad for uncertainty, though the patentee does not limit himself to the proportions recommended. *Patent Type Founding Co. v. Richard*, 1 Johnson, 381; 6 Jur. (N.S.) 39. **C**

(6) *Ibid.*—Misleading.

- (a) If a specification contains an untrue statement in a material circumstance, of such a nature that, if literally acted upon by a competent workman it would mislead him, and cause the experiment to fail, the specification is therefore bad, and the patent invalidated, although the jury finds that a competent workman acquainted with the subject, would not be misled by the error, but would correct it in practice. *Neilson v. Harford*, 8 M. and W. 806; 11 L. J. Ex. 20. **D**

- (b) If experiments are necessary for the production of any beneficial effect the patent is void. (*Ibid.*) **E**

- (c) A specification, when construed grammatically, claimed to effect a particular object by two processes, one of which would not effect the object, but evidence showed that no skilled practical workman would be misled as such a one would know that the one process would be ineffectual, and would adopt the other:—*Held*, that the specification was defective and the patent void. *Simpson v. Holliday*, 35 L.J. Ch. 811; L.R. 1 H.L. 315. *Affirming*, 12 L.T. 99; 13 W.R. 577. **F**

(7) *Ibid.*—Omitting essential matters.

- (a) A patent is void if the specification omits any ingredient which, though not necessary to the composition of the thing for which the patent is claimed, is a more beneficial and expeditious mode of producing the manufacture. *Wood v. Zimmer*, Holt, 58; 17 R.R. 605. **G**

- (b) If, in the specification of an improved gas apparatus, no direction is given respecting a condenser, which is a necessary part of every gas apparatus, this will not invalidate the patent, if it appears that every one capable of constructing a gas apparatus must know that a condenser must form a part of it. *Crossley v. Beverley*, 9 B. & C. 63; M. & M. 283; 3 Car. & P. 513; 7 L.J. (O.S.) K.B. 127; 1 Russ. & M. 166. **H**

- (c) The omission to mention in a specification anything which may be necessary for the beneficial enjoyment of the invention is a fatal defect. *Neilson v. Harford*, 8 M. & W. 806; 11 L.J. Ex. 20. **I**

- (d) But *aliter* if such omission goes only to the degree of the benefit. (*Ibid.*) **J**

- (e) If the apparatus described can be used beneficially in its simplest form, it is no objection that great improvements may have been made. (*Ibid.*) **K**

(8) *Ibid.*—Copyright.

There is no copyright in specification of patents. *Wyatt v. Barnard*, 3 Ves. & B. 77; 19 R.R. 141. **L**

2.—“Drawings.”

When they may be called in aid.

(a) The patentee is not at liberty to refer to the drawings accompanying the patent, when, according to the natural construction of the claim, it is void for want of novelty. *Hinks v. Safety Lighting Co.*, 46 L.J. Ch. 185; 4 Ch. D. 607; 36 L.T. 391. **M**

(b) An inventor of a machine is not tied down to make such a specification as by words only that would enable a skilful mechanic to make the machine, but he is allowed to call in aid the drawings which he may annex to the specification: and if, by a comparison of the words and the drawings, the one will explain the other sufficiently to enable a skilful workman to perform the work, such specification is sufficient. *Bloxam v. Elsce*, 1 Car. & P. 558. **N**

(c) When a specification in the first instance describes the invention in too general terms, but afterwards in describing the method of performing the invention, refers to figures in drawings annexed thereto, and the claim made is for the manufacture of the invention, described with reference to those figures, the specification is sufficient. *Daw v. Eley*, 13 L.T. 399. **O**

Proceedings upon application.

5. (1) The Controller shall examine every application, and if he considers that—

- (a) the nature of the invention is not fairly described,¹ or
- (b) the application, specification and drawings² have not been prepared in the prescribed manner or relate to more than one invention, or
- (c) the title does not sufficiently indicate the subject-matter of the invention, or
- (d) the statement of claim does not sufficiently define the invention, or
- (e) the invention as described and claimed is *prima facie* not a new manufacture or improvement,

he may refuse to accept the application or require that the application, specification or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the Controller so directs, bear date as from the time when the requirement is complied with.

(2) Where the Controller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the Governor General in Council.

(3) The investigations required by this section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by the Governor General in Council or any officer by reason of, or in connection with, any such investigation, or any proceeding consequent thereon.

(4) Unless an application is accepted within twelve months from the date of the application, the application shall (except where an appeal has been lodged) become void :

Provided that where an application is made for an extension of time for the acceptance of an application, the Controller shall, on payment of the prescribed fee, grant an extension of time to the extent applied for but not exceeding three months.

(Notes).

N.B.—See cases notes under S. 4, *supra*.

1.—“ The nature....described.”

(1) Method.

A description in a specification of a lamp burner omitted to state where the hole for the admission of air was to be :—*Held* that, the specification was insufficient. *Hinkes v. Safety Lighting Co.*, 46 L.J.C. 185. P

(2) Descriptions of genus, not species.

The specification of a patent is bad if one of the materials to be used is described by a generic term comprising a variety of species, the majority of which would be unsuitable. *Wegmann v. Corcoran*, 13 Ch. D. 65 = 41 L.T. 358. Q

(3) Sufficient description.

Whether a specification contains a—can only be ascertained by experiment. *Betts v. Neilson*, 37 L.J. Ch. 321. R

2.—“ Drawings.”

Drawings not properly explained etc.

In a drawing of a machine attached to a specification there was shown an intervening space or opening, between two parts of the machine, the object of the patent ; it was intended as the arching of a cutter plate, but this was not referred to and explained in the specification. In the specification there was the statement of an evil in existing machines, and upon careful examination, by a skilful person, he might suppose that the space exhibited in the drawing was intended to obviate this evil, but there was no statement to that effect, nor was the form of the opening described, and described as a necessary quality of improvement in the machine. This form was afterwards relied on as one of the great improvements in the combination of the patented apparatus :—*Held* that as it had not been properly explained, described, and claimed the specification was defective. *Clark v. Adie*, 46 L.J. Ch. 585. S

6. On the acceptance of an application the Controller shall give

Advertisement on acceptance of application.

notice thereof to the applicant and shall advertise the acceptance ; and the application and specification with the drawings (if any) shall be open to public inspection.

7. Where an application for a patent in respect of an invention has

Use of invention on acceptance of application.

been accepted, any use or publication of the invention during the period between the date of application and the date of sealing such patent, shall not prejudice the

patent to be granted for the invention :

Provided that an applicant shall not be entitled to institute any proceedings for infringement unless and until a patent for the invention has been granted to him.

8. After acceptance of an application and before sealing a patent the Inquiry before Controller shall, if he thinks it advisable or is directed sealing patent. by the Governor General in Council so to do, refer the specification for inquiry and report to any person whom he thinks fit.

9. (1) Any person may, on payment of the prescribed fee, at any time Opposition to within three months from the date of the advertise- grant of patent1. ment of the acceptance of an application, give notice at the Patent Office of opposition to the grant of the patent on any of the following grounds, namely :—

- (a) that the applicant obtained the invention from him, or from a person of whom he is the legal representative or assign ; or
- (b) that the invention has been claimed in any specification filed in British India which is or will be of prior date to the patent, the grant of which is opposed ; or
- (c) that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the specification ; or
- (d) that the invention has been publicly used in any part of British India or has been made publicly known in any part of British India ;

but on no other ground.

(2) Where such notice is given, the Controller shall give notice of the opposition to the applicant, and shall, on the expiration of those three months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

(3) The decision of the Controller shall be subject to appeal to the Governor General in Council.

(Notes).

1.—“Opposition to grant of patent.”

(1) Opposition to grant of patent—Onus.

In opposing the grant of letters patent, the burden is on the opponent to show that the grant would be clearly wrong. *Sheffield's Patent, Ex parte*, 42 L.J., Ch. 356 ; L.R. 8 Ch. 237 ; 21 W.R. 233. T

(2) Nature of public knowledge.

(a) Prior knowledge to avoid a patent, must be knowledge equal to that required to be given by a patent ; that is, such knowledge as will enable the public to perceive the very discovery, and to carry the invention into practical use. *Hills v. Evans*, 4 De G. F. and J. 288. U

(b) A prior publication, to have that effect, must be one from which a person with ordinary knowledge would be able practically to apply the discovery without further experiment. (*Ibid.*) Y

1.—“Opposition to grant of patent” —(Concluded).

- (c) To avoid a patent on the ground of prior publication, it is not enough that the invention has been published; it must have been made public to such an extent, that a knowledge of it may be assumed among persons conversant with the subject. *Plimpton v. Spiller*, 47 L.J.Ch. 211. **W**
- (d) The prior publication must contain a description equivalent to a sufficient specification. (*Ibid.*) **X**
- (e) In order to establish the prior public use of a patented article so as to invalidate the patent, it is not necessary to show that the article had been manufactured for sale. *Betts v. Neilson*, 37 L.J. Ch. 321. **Y**

10. (1) If there is no opposition, or, in case of opposition, if the de-
 Grant 1 and seal- termination is in favour of the grant of a patent, a
 ing 2 of patent. patent shall, on payment of the prescribed fee, be
 granted, subject to such conditions (if any) as the Governor General in
 Council thinks expedient, to the applicant, or in the case of a joint appli-
 cation to the applicants jointly, and the Controller shall cause the patent
 to be sealed with the seal of the Patent Office.

(2) A patent shall be sealed as soon as may be, and not after the ex-
 piration of eighteen months from the date of application :

Provided that,—

- (a) where the Controller has allowed an extension of the time within which an application may be accepted, a further extension of four months, after the said eighteen months shall be allowed for the sealing of the patent ;
- (b) where the sealing is delayed by an appeal to the Governor General in Council, or by a reference under section 8, or by opposition to the grant of the patent, the patent may be sealed at such time as the Controller may direct ;
- (c) where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death ;
- (d) where in consequence of the neglect or failure of the applicant to pay any fee a patent cannot be sealed within the period allowed by this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to such an extent as may be prescribed.

(Notes).

1.—“Grant.”

Objection for want of novelty.

It is no objection to the grant of a patent that another has been making experi-
 ments and working towards a similar invention. *Henry's Patent*, *In*
re, 42 L.J. Ch. 363, **Z**

2.—“*Sealing.*”

Opposing to sealing.

• Unless a patent is clearly bad, the sealing of the patent will not be refused.
Spence's Patent, In re, 7 W.R. 157. A

11. Except as otherwise expressly provided by this Act, a patent
 Date of patent. shall be dated and sealed as of the date of the
 application :

Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the specification.

12. (1) A patent sealed with the seal of the Patent Office shall,
 Effect, extent and subject to the other provisions of this Act, confer on
 form of patent. the patentee the exclusive privilege of making, selling
 and using the invention throughout British India and of authorizing
 others so to do.

(2) Every patent may be in the prescribed form and shall be granted
 for one invention only, but the specification may contain more than one
 claim ; and it shall not be competent for any person in a suit or other
 proceeding to take any objection to a patent on the ground that it has
 been granted for more than one invention.

13. (1) A patent granted to the true and first inventor or his legal
 Fraudulent appli- representative or assign shall not be invalidated by an
 cations for patents. application in fraud of him, or by protection obtained
 thereon or by any use or publication of the invention subsequent to that
 fraudulent application during the period of protection.

(2) Where a patent has been revoked on the ground of fraud or on any
 other ground, ¹ the Controller may, on the application of the true inventor
 or his legal representative or assign made in accordance with the provi-
 sions of this Act, grant to him a patent in lieu of and bearing the same
 date as the patent so revoked for any invention comprised in the revoked
 patent to which he was entitled :

Provided that no suit shall be brought for any infringement of the
 patent so granted committed before the actual date when such patent
 was granted.

(Notes).

1.—“*On any other ground.*”

(1) **By whom introduced.**

The Select Committee introduced the words “on any other ground” in S. 13,
 cl. (2). [See the Report of the Select Committee.] B

(2) **Reason for introduction.**

The words “on any other ground” are introduced to meet cases of hardship
 arising in circumstances akin to fraud, but not falling within the
 legal definition of fraud. (*Ibid.*) C

Term of Patent.

14. (1) The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Act, be fourteen years from its date.

Term of patent.

(2) A patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to pay the prescribed fees within the prescribed times :

Provided that the Controller, upon the application of the patentee, shall, on receipt of such additional fee as may be prescribed, enlarge the time to such an extent as may be applied for but not exceeding three months.

(3) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the Court before which the proceeding is taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

15. (1) A patentee² may, after advertising in the prescribed manner his intention to do so, present a petition to the Governor General in Council praying that his patent may be extended for a further term ; but such petition must be left at the Patent Office at least six months before the time limited for the expiration of the patent and must be accompanied by the prescribed fee.

(2) Any person may give notice to the Controller of objection to the extension.³

(3) Where a petition is presented under sub-section (1), the Governor General in Council may, as he thinks fit, dispose of the petition himself or refer it to a High Court for decision.

(4) If the petition be referred to a High Court, then on the hearing of such petition under this section the patentee, and any person who has given notice under sub-section (2) of objection, shall be made parties to the proceeding, and the Controller shall be entitled to appear and be heard.

(5) The Court to which the petition is referred shall, in considering its decision, have regard to the nature and merits of the invention⁴ in relation to the public, to the profits made by the patentee⁵ as such, and to all the circumstances of the case.

(6) If it appears to the Governor General in Council, or to the High Court when the petition has been referred to it, that the patentee has been inadequately remunerated⁶ by his patent, the Governor General in Council or the High Court, as the case may be, may by order extend the term of the patent for a further term not exceeding seven, or, in exceptional cases, fourteen years, or may order the grant of a new patent for such term as may be specified in the order and subject to the pay-

ment of such fees as may be prescribed and containing any restriction, conditions and provisions which the Governor General in Council or the High Court, as the case may be, may think fit :

Provided that any patent so extended or granted shall, notwithstanding anything therein, or in this Act, cease if the inventor fails to pay before the expiration of each year the prescribed fee.

(Notes).

I.—“ Extension of term of patent.”

1. Extension of term granted.

(1) Grounds for extension.

(a) The merit and utility of the invention ; the merit of the petitioner in patronising an ingenious inventor, and liberally expending money to introduce the invention ; the amount of profit not being greater than the ordinary profit on capital employed in similar trades ; the annoyances, anxiety, and costs of litigation, are several grounds of consideration in recommending an extension. *Whitehouse's Patent, In re*, 2 Moore, P.C. 496. D

(b) It is essential, in order to obtain an extension of the term of letters patent, for the petitioner to establish that the invention is of considerable merit, of public utility, and of inadequate remuneration. *Mc Dougall's Patent, In re*, 37 L.J., P.C., 17 ; L.R., 2 P.C. 1 ; 5 Moore, P.C. (N.S.) 1. E

(c) To entitle a patentee, or his assignee, to an extension of the term of letters patent, he must establish three things : first, the merit of the invention ; secondly, that the parties interested had done all in their power to bring the invention into public use and to turn it to advantage ; and thirdly, that from circumstances beyond their control they had been unable to obtain adequate remuneration. *Markwick's Patent, In re*, 18 Moore, P.C. 310 ; 8 W.R. 333. F

(2) Prolongation—Patent of great merit.

Prolongation for five years granted to a patent of conspicuous merit, by which, in one form of its application both at home and from the foreign patents for the invention, the patentee had, if allowance were made for his services, made little if any profit, and in another application the profit would depend on the success of a company which had not started operations, and the prosperity of which would depend largely on the prolongation of the original patent. *Parsons' Patent, In re*, 67 L.J.P.C. 55 ; (1898) A.C. 673 ; 15 Rep. Pat. Cas. 349. G

(3) *Ibid.*—Expensive litigation the patentee had been put to.

Term of letters patent extended for seven years, on the ground of the meritorious nature of the invention and the expensive litigation the patentee had been put to in protecting his patent rights, which had prevented any remuneration. *Heath's v. Patent, In re*, 8 Moore, P.C. 217. H

(4) *Ibid.*—Loss by patentee.

A patent of great merit, in the perfecting and introduction of which the patentee had incurred loss, and which could only gradually replace existing machinery, extended for a term of ten years. *Currie and Timmis's Patent, In re*, 67 L.J.P.C. 55 ; (1898) A.C. 673 ; 15 Rep. Pat. Cas. 349. I

I.—“Extension of term of patent”—(Continued).

I.—Extension of term granted.—(Continued).

(b) *Ibid.*—No profit, coupled with evidence of utility.

Term extended upon *prima facie* evidence of no profit, coupled with evidence of utility. *Lowe's Patent, In re*, 10 Jur. 363. J

(6) *Ibid.*—Subject to condition.

The accounts produced at the hearing were unsatisfactory, owing to the non-production of the books. The committee recommending a prolongation of the term of the letters patent, directed a proper account of the profits and losses of the patent to be verified by affidavit, with an explanation accounting for the non-production of the books, to be laid before the attorney-general, subject to which they extended the term. *Marwick's Patent, In re*, 13 Moore, P.C. 310. K

(7) *Ibid.*—Non-user satisfactorily accounted for.

(a) Where an invention has not been brought into use during the term of the letters patent, but such non-user is satisfactorily accounted for, and the invention is one of great merit, an extension may be granted. *Southby's Patent*, (1891) A.C. 432. L

(b) The fact of a patent of a valuable nature, but having a limited market, not having been so generally used as to remunerate the inventor, is sufficient to remove the presumption against the utility of the invention. *Herbert's Patent, In re*, L.R. 1 P.C. 399. M

(8) *Ibid.*—Question as to validity.

(a) On an application for the prolongation of a patent it is not the practice to decide upon the novelty or utility of the patent, except so far as such novelty or utility may properly be described as merit of that high degree that, every other requisite being satisfactory, it would entitle the patentee to a prolongation. *Saxby's Patent, In re*, 7 Moore, P.C. (N.S.) 82; L. R. 3 P.C. 292; 19 W.R. 513. N

(b) Upon an application for a prolongation of a patent, the invalidity of the patent for want of novelty is not a proper ground of objection; inasmuch as the prolonged patent does not stand on firmer ground than the original patent, and is granted subject to all objections which could be made to the original patent. *Galloway's Patent, In re*, 7 Jur. 453. O

(c) In a case where the evidence tended to show that the patent article, in the exact form described in the drawings attached to the specification, was not, at the time of the application for a prolongation, practically useful; but where it was clearly proved that the same combination of parts or mechanical method for which alone the patent was taken out, with certain alterations and improvements in matters not included as parts of the invention, was of great practical utility, the committee granted a prolongation, although there was no patent for the alterations and improvements, which were therefore open to the public, and yet could not be used without infringing the prolonged patent. (*Ibid.*) P

(9) *Ibid.*—Power to grant second extension.

The power given to the Court by S. 18 of the English Patents and Designs Act, 1907, to grant an extension of the terms of letters patent does not apply to a case where an extension has been once recommended and new

I.—“Extension of term of patent”—(Continued).

I.—Extension of term granted—(Concluded).

letters patent granted, and the Court has no jurisdiction to entertain a petition for a further prolongation of the new letters patent. *Goucher's Patent, In re*, (2 Moore P.C. (N.S.) 592), *Followed. Thompson's Patent, In re*, 78 L.J. Ch. 690; (1909) 2 Ch. 447; 101 L.T. 527; 25 T. L.R. 786; 26 Rep. Pat. Cas. 673.—*Parker, J.* Q

II. Extension of term refused.

(1) Grounds of refusal.

(a) Extension of the term of letters patent refused, although the profits derived from the patent article were less than the expenditure incurred upon the patent, the utility of the invention being small. The fact of an invention, when known, not getting into general use, is a presumption against its utility. *Simister's Patent, In re*, 4 Moore, P.C. 164; 7 Jur. 451. R

(b) The non-reduction of the patent into practical public utility is the strongest evidence against merit and utility. *Pinkus Patent, In re*, 12 Jur. 233. S

(2) Non-user, when fatal.

(a) The grounds on which extensions of patents are granted have all reference to the inventor. They are, first, to reward the inventor for the peculiar ability and industry he has exercised in making the discovery. Secondly, to reward him, because some great benefit of an unusual description has by him been conferred upon the public through the invention itself; or thirdly, because the inventor has not been sufficiently remunerated by the profits derived from his strenuous exertions to make the invention profitable. All these grounds proceed on the supposition that the invention is a new and a useful invention. But where an inventor intentionally delays for a great length of time attempting to put the invention into practice, those reasons for a prolongation of the patent cannot be relied upon by him, unless he shows some reasonable ground, such as want of funds, for the delay. *Norton's Patent, In re*, 1 Moore, P.C. (N.S.) 339; 9 Jur. (N.S.) 419; 11 W.R. 720. S.P., *Marwick's Patent, In re, supra.* T

(b) When the utility of a patent has not been tested by actual employment, for a period of fourteen years, although efforts have been made by the patentee to bring it into use, it raises a very strong presumption against its practical utility, which presumption can only be rebutted by the strongest evidence. *Allan's Patent, In re*, L.R. 1 P.C. 507. U

(c) If an invention has not been brought into practical use during the term of the letters patent, it raises a strong, though not conclusive, presumption against its utility; and unless there are circumstances to rebut such presumption, an extension will not be granted. *Herbert's Patent, In re*, L.R. 1 P.C. 399. V

(d) When a patentee entered into an agreement with parties to work the patent, but owing to disputes between them the invention was not prosecuted till within a short period before the expiration of the letters patent, an extension was refused. *Patterson's Patent, In re*, 6 Moore, P.C. 469; 13 Jur. 593. W

I.—“Extension of term of patent”—(Concluded).

II.—Extension of term refused—(Concluded).

(3) Subject matter not sufficient to sustain patent.

(a) Although the judicial committee will not adjudicate upon the validity of letters patent, the term of which is sought to be prolonged, yet where it appears from the specification that the subject-matter is not sufficient to sustain such patent, they will not, in the exercise of their discretion, recommend the crown to extend the term. *Mc Dougall's Patent, In re*, 37 L.J.P.C. 17. **X**

(b) Where, therefore, the specification of a patent described it as improvements in treating, deodorising and disinfecting, sewage and other offensive matter, and also for deodorising and disinfecting in general, and as being composed of two ordinary well-known chemical acids in combination, such acids being in common use for disinfecting purposes by the public before and after the letters patent:—*Held*, not to be an invention of such merit and utility as to justify an extension to the detriment of the public in the use of known sanitary agents. (*Ibid.*) **Y**

(4) Patent article unprofitable.

A patent article was unprofitable for ten years after the date of the patent, in consequence of a defect which was not cured until then. Extension of the term refused. *Bell's Patent, In re*, 10 Jur. 363. **Z**

(5) Question as to validity.

(a) If it can be clearly shown that the patent sought to be extended is bad for want of originality, the Privy Council will not entertain the application. *Aliter*, if at most a doubtful question as to the validity of the letters patent can be raised. *Betts' Patent, In re*, 1 N.R. 137; 1 Moore, P.C. (N.S.) 49; 9 Jur. (N.S) 137; 7 L.T. 577; 11 W.R. 221. **A**

(b) Where, upon an application for the extension of the term of letters patent, it appears clearly that the patent is invalid, the judicial committee will not grant an extension, and thereby drive the opposing parties to their *scire facias*. [But, if the validity of the patent be only doubtful, and the utility and want of profit be proved, the Court will extend the term of the letters patent.] *Woodcroft's Patent, In re*, 10 Jur. 363. **B**

(6) Prolongation refused—Loss through want of business capacity.

Prolongation of a patent refused for an invention consisting in the novel application of known principles in which there was no striking or unusual merit and the inadequacy of remuneration (if any) for which was due in part to defects in the patentee's method of carrying on his business. *Thornycroft's Patent, In re*, 63 L.J.P.C. 63; (1899) A.C. 415; 16 Rep. Pat. Cas. 202. **C**

2.—“Patentee.”

I —Extension of term of patent granted.

(1) Principles.

Assignees of letters patent may lawfully obtain a renewal of such letters patent, *Ledsam v. Russell*, 14 M. & W. 574; 14 L.J., Ex. 353; 9 Jur. 557. *Affirmed* in Ex. Ch. 16 M. & W. 633; 16 L.J., Ex. 145; and in Dom. Proc. 1 H.L. Cas. 687. **D**

2.—“*Patentee*”—(Concluded).

1.—Extension of term of patent granted—(Concluded).

(2) For benefit of patentee.

- (a) The inventor and patentee had lost largely by the patent, but his assignees had lately made very considerable profits, and from their position in the trade were likely to command a very large sale of the patent article. The patent was of high merit, and of great service to the public safety. A prolongation of the term was granted to the assignees for four years, upon conditions, first, that the assignees secured to the patentee half the profits derived from the sale; and, secondly, that the patented article should be sold by the assignees to the public at a fixed price. *Hardy's Patent, In re*, 6 Moore, P.C. 441; 13 Jur. 177. E
- (b) An extension was recommended in favour of an assignee, on his securing an annuity to the inventor during the subsistence of the new letters patent. *Whitehouse's Patent, In re*, 2 Moore, P.C. 496. F
- (c) Where the inventor, a mechanic, had assigned his interest to the patentee, his master, the judicial committee, under the circumstances, made it a condition of their recommendation to the crown to prolong the term of the patent, that the assignee of the patent should secure the inventor an annuity during the period of the extension. *Russell's Patent, In re*, 2 Moore, P.C. 496. G
- (d) Petition for prolongation by a patentee, together with the assignees of a moiety of the patent. After the presentation of the petition, and before the hearing, the patentee died, having by his will appointed his widow executrix and residuary legatee. Extension granted to the assignees on condition that they held the moiety of the patent in trust for the widow of the patentee. *Herbert's Patent, In re*, L.R. 1 P.C. 399. H
- (e) An extension will be granted to the assignee of a patent on an adequate remuneration (an annuity) being secured to the patentee. *Marwick's Patent, In re*, 13 Moore, P.C. 310; 8 W.R. 338. I

II. Extension of term of patent refused.

(1) When refused to assignee.

An assignee of the patentee who had taken an assignment of four-fifths of the patent within a few months of the expiration of a patent, which had only just been brought into use, for a small consideration, is not entitled to any extension. *Normand's Patent, In re*, 6 Moore, P.C. (N.S.), 477; L.R. 3 P.C. 198. J

(2) Prolongation—Petition by Assignee of patent—Inventor dead—No special merit.

The merit which entitles a patentee who has been insufficiently remunerated to an extension of his patent differs in kind and degree from that which is enough to sustain a patent. An application for prolongation refused in a case in which there was no special merit and no real invention, in which there was little energy or business capacity displayed in pushing the invention, and the applicant for extension was the assignee of the patent, the inventor having died, and there being no possibility of advantage to him if he had been alive. *Van Gelder's Patent, In re: Thompson, Ex parte*, 76 L.J.P.C. 44; (1907) A.C. 174; 96 L.T. 333, 24 Rep.Pat.Cas. 169. K

3.—“*Objection to the extension.*”(1) **Opposition encouraged.**

Opposition to an application for extension or confirmation of letters patent is rather encouraged than otherwise, and upon a successful opposition, the opposer's costs will, in general, be allowed. *Honiball's Patent, In re*, 9 Moore P.C. 378; 3 Eq. R. 225. L

(2) **Objections to extension of time.**

It is sufficient, prior to tendering evidence of instances of anticipation, to state the grounds of objection to the extension of letters patent without stating all the particulars of those objections. *Ball's Patent, In re*, 48 L.J.P.C. 24; 4 Ap.Cas. 171; 27 W.R. 477. M

(3) **Costs of opposition.**

(a) When there were several opponents, on dismissing the petition a lump sum was awarded to the opponents, to be divided *pro rata* for costs. *Johnsons' Patent, In re*, 8 Moore, P.C. (N.S.) 75; L.R. 4 P.C. 75. N

(b) A gross sum allowed for costs of opposers, instead of referring their costs to taxation. *Milner's Patent, In re*, 9 Moore, P.C. 39. O

(4) **Costs—Abandoned petition.**

(a) When a petition is abandoned, it is not necessary that the opposers should serve the petitioners with notice of their intended application to the Court for costs of opposition. *Bridson's Patent, In re*, 7 Moore, P.C. 499. P

(b) On a petition for prolongation, a day was fixed for hearing. Objections were lodged against an extension. Before the hearing, the petitioners abandoned the prosecution of the petition, and the costs of the opposition were allowed. *Hornby's Patent, In re*, 7 Moore P.C. 508. Q

4.—“*Merits of the invention.*”

See notes under “*Extension of term of patent,*” *supra*. R

5.—“*Profits made by the patentee.*”

I.—General.

(1) **Deductions.**

In estimating the profits derived from the patent, the judicial committee will take into consideration a deduction from the profits of the patent for the personal expenses of the patentee for the exclusive devotion of his time in bringing the patent into practical operation and public notice. *Carr's Patent, In re*, 9 Moore, P.C. (N.S.) 379; L.R. 4 P.C. 539. S

(2) **Costs of introduction.**

In taking an account of the profits and loss of the working of a patent, the patentee is entitled to charge, as part of his expenses, for loss of time in endeavouring to bring the invention into general use. *Newton's Patent, In re*, 14 Moore, P.C. 156; 10 W.R. 731. T

(3) **Manufacture.**

(a) In calculating whether any profit has been obtained through or by means of a patent, it is correct to deduct, in the first place, beyond the cost price, a fair manufacturer's profit on the articles sold; and the mere preference of the market obtained by the manufacturer is not to be deemed a profit derived from the patent. *Galloway's Patent, In re*, 7 Jur. 458. U

5.—“*Profits made by the patentee*”—(Continued).

I.—General—(Concluded).

- (b) If a patentee is also manufacturer of his patent article, in taking accounts of the profits of the patent he is entitled to deduct his profits as a manufacturer. *Bett's Patent, In re, supra.* Y

II. Extension of term of patent granted.

(1) Account of profits—Must be full and accurate.

- (a) A patentee, seeking the grace and favour of the crown, in applying for an extension of the term of letters patent, is bound to bring his accounts before the committee in such a shape as to leave no doubt what the remuneration has been that he has received from the patent. *Clark's Patent, In re, 7 Moore, P.C. (N.S.) 255; L.R. 3 P.C. 421.* W
- (b) The account of profit and loss of the patentee in working a patent ought to be clear and precise; and it is the duty of a patentee, if engaged in any other business, or as a manufacturer of his own invention, to keep the accounts of the patent and the manufacture separately. *Bett's Patent, In re, 1 N.R. 137; 1 Moore, P.C. (N.S.) 49; 9 Jur. (N.S.) 137; 7 L.T. 577; 11 W.R. 221.* X
- (c) The most unreserved and clear statement of the patentee's remuneration is an indispensable condition for extension. *Hill's Patent, In re, 1 Moore, P.C. (N.S.) 259; 9 Jur. (N.S.) 1209; 9 L.T. 101; 12 W.R. 25.* Y
- (d) To entitle a patentee to a prolongation of the term of letters patent, he must satisfactorily establish the amount of his profits. *Trotman's Patent, In re, L.R. 1 P.C. 118.* Z
- (e) A patentee should preserve the clearest evidence of everything which has been paid and received on account of the patent. Whether or not his remuneration has been adequate, his furnishing a satisfactory account is a condition precedent to his obtaining an extension of his term. *Adair's Patent, In re, 6 App. Cas. 176; 29 W.R. 746.* A

(2) *Ibid.*—Nature and Extent.

- (a) A patentee, in order to obtain a prolongation of the term of a patent, must satisfy the judicial committee by his accounts, in a manner which admits of no controversy, what has been the amount of remuneration which, in every point of view, the invention has brought him, and it is his duty to frame the accounts in such a shape as to leave no doubt as to what the remuneration has been that he has received. *Saxby's Patent, In re, 7 Moore, P.C. (N.S.) 82; L.R. 3 P.C. 292; 19 W.R. 513.* B
- (b) When the patentee is also the manufacturer, the profits which he makes as a manufacturer, although not strictly profits of the patent, must yet be taken into consideration in estimating the amount of his remuneration. (*Ibid.*) C
- (c) A prolongation of the term of letters patent for seven years was granted, the invention being a meritorious one, and of great value as a raw material for the manufacture of paper; no profit having been made either by the inventor or his assignees. The statement of accounts furnished being *prima facie* satisfactory, the petitioners were allowed to prove the merits of the invention before going into the accounts. *Houghton's Patent, In re, 7 Moore, P.C. (N.S.) 309; L.R. 3 P.C. 461.* D

5.—“*Profits made by the patentee*”—(Concluded).

III. Extension of term of patent refused.

(1) Accounts not full and accurate.

(a) A petition for extension, and the accounts furnished by the patentee not containing sufficiently full and accurate information in respect to the patent, or the remuneration received by him, the judicial committee declined to recommend a prolongation of the term. *Clark's Patent, In re*, 7 Moore, P.C. (N.S.) 255. E

(b) An account of profits and loss filed by a patentee on his application for a prolongation of the term of letters patent being *prima facie* unsatisfactory, the judicial committee directed the question of accounts to be taken before considering the merits of the invention. *Wield's Patent, In re*, 8 Moore, P.C. (N.S.) 300; L.R. 4 P.C. 89. F

(c) The accounts of a patent not being satisfactorily explained, an application for extension of the term of the patent will be refused. (*Ibid.*) G

(2) Insufficiency of accounts

(a) Where the accounts filed by a patentee showed not the result of the books, but the accountant's correction of them, and where it also appeared that the books themselves had been kept in such a way that without a very long minute, and laborious investigation it was impossible to say whether he had been adequately remunerated or not :—*Held*, that a petition for prolongation must be dismissed. *Lake's Patent*, 60 L.J. P. 57; (1831) A.C. 240—P.C. H

(b) The accounts of the patent not being satisfactorily explained, the application for extension of the term of the patent was refused. (*Ibid.*) I

(3) Accounts of receipts not filed.

A petition for prolongation was dismissed on the ground that the proper accounts had not been produced to show the remuneration of the patentee. *Yates and Kellett's Patent, In re*, 57 L.J.P.C. 1; 12 App. Cas. 147—P.C. J

6.—“*Inadequately remunerated.*”

(1) Value of disclosures—Adequacy of patentee's remuneration—Duty of petitioner.

(a) The first question arising on a petition for the extension of the term of a patent is the nature of the disclosure contained in the specification, and, for the purpose of determining this and its value to the public, evidence as to novelty and subject matter cannot altogether be excluded, though the detailed scientific evidence usual in infringement actions and petitions for revocation ought not to be allowed. It is the petitioner's duty to bring before the Court at the outset all that may in any way affect its judgment on these matters, and not to leave it to be brought out by an opponent. The length to which the petitioner's witnesses should be cross-examined, and the extent to which evidence of want of novelty or subject matter on the part of objectors should be admitted are in the discretion of the Court, having regard to the nature of each individual case; but, as a general rule, the Court will be satisfied if the evidence for the petitioner shows a *prima facie* case for upholding the validity of the patent in these respects. The Court will pay special attention to the fact that the thing disclosed, though minute compared with the sum total of previous knowledge, may be

6.—“*Inadequately remunerated*”—(Concluded).

the *sine qua non* of the successful application of that knowledge. *Johnson's Patent, In re*, (No. 2) 77 L.J. Ch. 787; (1909) 1 Ch. 114; 99 L.T. 697; 25 Rep. Pat. Cas. 709; 24 T.L.R. 889. *Parker, J.* K

- (b) It is only where the rule of disclosure largely exceeds the benefit derived by the patentee that he can be said to have been inadequately remunerated; and, in considering the adequacy of his remuneration, profits on corresponding foreign patents and profits which will probably be received in the future in respect both of those patents and of English patents, ought to be taken into account. A patentee petitioning for extension must prove that he has done everything possible to launch his invention on the British market. When the Comptroller opposes the extension of a patent on the ground that disadvantage would ensue to the traders of this country as compared with other traders, the Court must be supplied with proper statistics or other information as to the nature and extent of the competition feared, and the facts must be proved in the usual way. (*Ibid.*) L

(2) *Inadequate remuneration.*

- (a) An extension was granted for five years, the invention being of great merit and public utility, but the patentee and his grantees having received no remuneration in consequence of the originality of the patent being disputed at law. *Smith's Patent, In re*, 7 Moore, P.O. 138. M
- (b) Where circumstances showed a want of adequate remuneration, an extension of the term of letters patent granted for six years. *Garr's Patent, In re*, L.R. 4 P.C. 539; 9 Moore, P.O. (N.S.), 379. N
- (c) Term of letters patent for improvement in manufacturing gas tubes extended by the judicial committee, under the 5 & 6 Will. 4, c. 83, for six years, on the ground of the great merit and utility of the invention, and the inadequate remuneration in consequence of litigation necessary for the protection of the patent right. *Russell's Patent, In re*, 2 Moore, P.O. 496. . . . O
- (d) Where the inventor, a mechanic, had assigned his interest to the patentee, his master, the judicial committee, under the circumstances, made it a condition of their recommendation to the crown to prolong the term of the patent, that the assignee of the patent should secure the inventor an annuity during the period of the extension. (*Ibid.*) P

16. (1) Where any patent has ceased owing to the failure of the Restoration of patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Controller in the prescribed manner for an order for the restoration of the patent.

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional or unavoidable¹ and that no undue delay has occurred in the making of the application, the Controller shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Patent Office.

(4) Where such notice is given the Controller shall notify the applicant thereof.

(5) After the expiration of the prescribed period the Controller shall hear the case and, subject to an appeal to the Governor General in Council, issue an order either restoring the patent subject to any conditions deemed to be advisable or dismissing the application :

Provided that in every order under this section restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had ceased.

(Notes).

1.—“ Unavoidable.”

(1) Introduced by whom ?

The word “unavoidable” was introduced in S. 16, cl. (3) by the select committee (See the Report of the Select Committee). Q

(2) Why introduced.

The word “unavoidable” was introduced to avoid the defect felt in the corresponding provision of the English Statute. (*Ibid.*) R

Amendment of application or specification.

17. (1) An applicant or a patentee may at any time, by request in writing left at the Patent Office and accompanied by the prescribed fee, seek leave to amend his application or specification, including drawings forming part thereof, by way of disclaimer², correction or explanation³, stating the nature of, and the reasons for, the proposed amendment.

(2) If the application for a patent has not been accepted, the Controller shall determine whether and subject to what conditions (if any) the amendment shall be allowed.

(3) In any other case the request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within three months from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(4) Where such a notice is given the Controller shall give notice of the opposition to the person making the request, and shall hear and decide the case.

(5) Where no notice of opposition is given, or the person so giving notice of opposition does not appear, the Controller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) The decision of the Controller in either case shall be subject to an appeal to the Governor General in Council.

(7) No amendment shall be allowed that would make the application or specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the application or specification as it stood before amendment.

(8) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall be advertised in the prescribed manner, and shall in all Courts and for all purposes be deemed to form part of the application or specification.

(9) This section shall not apply when and so long as any suit for infringement or proceeding before a Court for the revocation of the patent is pending.

(Notes).

1.—“Amendment.”

(1) In what cases.

- (a) A clerical error in the enrolment of the specification will be amended. *Redmund, In re*, 5 Russ. 44; 6 L.J. Ch. 183. S
- (b) Clerical error, consisting of the insertion of the name of “Charles” instead of “George” in the enrolment of a patent, ordered to be amended. *Dismore, In re*, 18 Beav. 539. T
- (c) Instance of a patent amended and resealed. *Anon*, Beam. Ord. 67. U

(2) Discretion of Judge under English Act.

Where a Judge who hears a petition for revocation of a patent has in the exercise of his discretion given leave to the patentee, to apply for leave to amend the specification by disclaimer on certain terms, the Court of Appeal will not review the discretion thus exercised by the Judge in imposing terms. *Geipel's Patent, In re*, 73 L.J. Ch. 215; (1904) 1 Ch. 239; 90 L.T. 70; 52 W.R. 339. Y

2.—“Disclaimer.”

(1) Disclaimer—Principles.

A disclaimer cannot be made use of for the purpose of converting a barren and an unprofitable generality in a specification into a specific practical description or to convert that which, upon the description in the specification, is not applicable to any one definite form into a description applicable to a specific and definite mode of proceeding. *Ralston v. Smith*, 11 C.B. (N.S.) 471; 31 L.J.C.P. 102; 8 Jur. (N.S.) 100. *Affirmed*, 11 H.L. Cas. 223; 20 C.B. (N.S.) 28; 35 L.J.C.P. 49; 18 L.T. 1. W

(2) *Ibid*.—Effect.

- (a) A patentee having altered his specification by disclaimer, lodged a complaint against certain manufacturers for breach of an interdict granted anterior to the disclaimer:—*Held*, that the patentee ought to have instituted a new action; and that, although the instrument of the manufacturers was intended to execute the same work, it was no infringement; although it was cognate, it had not the characteristic feature of the patentee's invention. *Dudgeon v. Thompson*, 3 App. Cas. 34. X

2.—“Disclaimer”—(Concluded).

- (b) The invention as it stood before the disclaimer may have been new, useful and legal, but it might not have been so under the altered specification. After the disclaimer the question of enforcing the old interdict could not be entertained. (*Ibid.*) Y

(3) *Ibid.*—On assignment.

A disclaimer will be valid notwithstanding the grantee, at the time he entered it, had assigned all his interest in the patent. *Wallington v. Dale*, 7 Ex. 888; 23 L.J. Ex. 49. Z

(4) *Ibid.*—Construction.

The plain language of the operative part of a disclaimer is not to be controlled or modified by any introductory sentences with which the patentee may think fit to preface such disclaimer. *Cannington v. Nuttall*, 40 L.J. Ch. 739; L.R. 5 H.L. 205. A

(5) *Ibid.*—Explanation by.

- (a) The effect of a disclaimer is merely to strike out from the specification those parts of the machinery which are disclaimed; it cannot be read as explanatory of that which remains. *Tetley v. Easton*, *supra*. B

- (b) Any part of the provisional specification of a patent may be omitted in the complete specification, if there is no fraud and the effect of the remainder is not altered by the omission. All the claiming clauses may be struck out of the specification of a patent by a disclaimer, if there remain in the body of the specification words sufficiently distinguishing what the invention is which the patentee claims. *Thomas v. Welch*, 35 L.J. C.P. 200; L.R. 1 C.P. 192; 12 Jur. (N.S.) 316. C

(6) *Ibid.*, Verbal alteration by.

- • • An alteration, verbal merely and not substantive, by means of a disclaimer, will not make a patent void. (*Ibid.*) D

3.—“Correction or explanation.”

Amendment by way of correction or explanation—Validity of Patent.

A patent was granted for “a telescope ladder for domestic and other purposes.” The invention consisted of two distinct ladders of equal length, one drawing up out of the other by pulling a cord, both ends of which were attached to the inner or sliding ladder, which could be adjusted at any height by means of a lever bracket, on which any of the steps of the sliding ladder could rest, thus keeping the ladder fixed in its place. The specification claimed—(1) “The two ladders occupying the space of one only. (2) The ready means of working by the cord. (3) The simple bracket lever by which the ladder is secured at any required length.” The patentee afterwards obtained leave to amend his specification and he amended it by striking out the whole of the claims numbered (1), (2), (3), and substituting for them the following as his claim :—“The combination in a telescope ladder as herein described, of means for raising, lowering, and stopping, all as herein described, and shown in accompanying drawings.” In an action for the infringement of the patent :—*Held* upon the construction of the

3.—“*Correction or explanation*”—(Concluded).

whole specification as it stood before the amendment, that the claim was really for a combination, and that consequently the amendment was only a correction or explanation” and did not make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by “the original specification,” and that consequently the amendment did not render the patent invalid. *Kelly v. Heathman*, 60 L.J.Ch. 22; 45 Ch.D. 256 63 L.T. 517; 39 W.R. 91. E

18. In any suit for infringement of a patent or proceeding before a Court for the revocation of a patent the Court may by order allow the patentee to amend his specification by way of disclaimer in such manner, and subject to such terms as to costs, advertisement or otherwise, as the Court may think fit:

Amendment of specification by the Court. Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before the amendment, and where an application for such an order is made to the Court notice of the application shall be given to the Controller, and the Controller shall have the right to appear and be heard.¹

(Notes).

1.—“*Notice....be heard.*”

Disclaimer—Presence of Comptroller—Costs of Comptroller.

In a motion to amend letters patent by disclaimer notice of the motion must be served upon the Controller of Patents, and the motion must be duly advertised. In such a case the Court has jurisdiction to order the costs of the Controller, should he appear at the hearing of the motion, to be paid by the applicant. *Klaber and Steinberg, Patent, In re*, 77 L.J.Ch. 569; (1908) 1 Ch. 847; 99 L.T. 87; 24 T.L.R. 362. 482; 25 Rep. Pat. Cas. 334—*Neville, J.* F

In the absence of special circumstances the Court imposed upon the patentee, as a term of his being permitted to amend, that no action for an injunction should be brought by him for infringement of the patent in respect of any article made prior to the date of amendment, unless the patentee should establish to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge. *Geipal's Patent, In re*, (73 L.J., Ch. 47; (1908) 2 Ch. 715), *Followed.* (*Ibid.*) G

19. Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act, no damages shall be given in any suit in respect of the use of the invention, before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.¹

(Notes).

1.—“Original claim....knowledge.”

Original claim framed in good faith and with reasonable skill and knowledge.

Where, in an action for infringement of their patent, patentees have amended the original specification by way of disclaimer and established at the trial their claim for an infringement of the amended specification as it stands, the Court will not, for the purpose of certifying that the original specification was framed in good faith and with reasonable skill and knowledge read the erased portions of the specification ; to do so would be in effect to allow the plaintiffs to raise a fresh issue after judgment. *Jandus Arc Lamp Co. v. Arc Lamps, Ltd.*, 92 L.T. 447 ; 22 Rep. Pat. Cas. 277 ; 21 T.L.R. 308—*Kekewich, J.* H

20. (1) There shall be kept at the Patent Office a book called the Register of Patents. Register of Patents wherein shall be entered the names, and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed.

(2) The register of inventions and address book existing at the commencement of this Act shall be incorporated with, and form part of, the register of patents under this Act.

(3) The register of patents shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein¹.

(4) Copies of deeds, licenses and any other documents affecting the proprietorship in any patent or in any license thereunder, must be supplied to the Controller in the prescribed manner for filing in the Patent Office, and, unless such copies have been so supplied, such deeds, licenses or other documents shall not be received as evidence of any transaction affecting a patent.

(Notes).

1.—“The register of patents....inserted therein.”

S. 15, Act V of 1888—Entry in register—Certified copies—Evidentiary value.

By S. 14 of Act V of 1888, every entry in the register of inventions and every document entered and recorded in the register is to be deemed for the purposes of the law of evidence for the time being in force to be a public document. 4 A.L.J.R. 11 (12). I

Therefore, under the provisions of the Evidence Act the certified copies were admissible in proof of the entries. (*Ibid.*) J

Crown.

21. Subject to any conditions which the Governor General in Council may have imposed, a patent shall have to all intents the like effect as against His Majesty as it has against a subject :

Patent to bind
Crown.

Provided that the officers or authorities administering any department of the service of His Majesty may, by themselves, their agents, contractors or others, at any time after the application, use the invention for the services of the Crown on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Governor General in Council, between those officers or authorities and the patentee, or, in default of agreement, as may be settled by the Governor General in Council after hearing all parties interested.

Compulsory Licenses and Revocation.

22. (1) Any person interested may present a petition to the Governor General in Council, which shall be left at the Patent Office, together with the prescribed fee, alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied, and praying for the grant of a compulsory license, or, in the alternative, for the revocation of the patent.

(2) The Governor General in Council shall consider the petition, and if the parties do not come to an arrangement between themselves the Governor General in Council may, as he thinks fit, either dispose of the petition himself or refer it to a High Court for decision.

(3) The provisions of sub-section (4) of section 15, prescribing the procedure to be followed in the case of references to the Court under that section, shall apply in the case of references made to the Court under this section.

(4) If the Governor General in Council is of opinion, or, where a reference has been made under sub-section (2) to a High Court, that Court finds, that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered to grant licenses on such terms as the Governor General in Council or the High Court, as the case may be, may think just, or, if the Governor General in Council or the High Court is of opinion that the reasonable requirements of the public will not be satisfied by the grant of licenses, the patent may be revoked by order of the Governor General in Council or the High Court :

Provided that an order of revocation shall not be made before the expiration of four years from the date of the patent, or if the patentee gives satisfactory reasons for his default.

(5) For the purposes of this section the reasonable requirements of the public shall not be deemed to have been satisfied—

(a) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient

working, or to carry on the patented process to an adequate extent or to grant licenses on reasonable terms, any existing trade or industry, or the establishment of any new trade or industry in British India is unfairly prejudiced, or the demand for the patented article or the article produced by the patented process is not reasonably met; or

(b) if any trade or industry in British India is unfairly prejudiced by the conditions attached by the patentee before or after the commencement of this Act to the purchase, hire, or use of the patented article or to the using or working of the patented process.

(6) An order of the Governor General in Council or of the High Court directing the grant of any license under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a license and made between the parties to the proceeding.

23. (1) At any time not less than four years after the date of a patent granted under this Act, any person may apply to the Governor General in Council for the revocation of the patent on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside British India¹.

(2) The Governor General in Council shall consider the application, and, if after inquiry he is satisfied—

(a) that the allegations contained therein are correct; and

(b) that the applicant is prepared, and is in a position, to manufacture or carry on the patented article or process in British India; and

(c) that the patentee refuses to grant a license on reasonable terms,

then, subject to the provisions of this section, and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in British India, or gives satisfactory reasons why the article or process is not so manufactured or carried on, the Governor General in Council may make an order revoking the patent either—

(i) forthwith; or

(ii) after such reasonable interval as may be specified in the order unless in the meantime it is shown to his satisfaction that the patented article or process is manufactured or carried on within British India to an adequate extent.

(3) No order revoking a patent shall be made under the last sub-section which is at variance with any treaty, convention, arrangement or engagement with any foreign country or British possession.

(4) The Governor General in Council may, on the application of the patentee, extend the time limited in any order made under sub-section (2), clause (ii), for such period not exceeding two years as he may specify in a subsequent order, or revoke any order made under sub-section (2), clause (ii), or any subsequent order if sufficient cause is in his opinion shown by the patentee.

(Notes).

I.—“Revocation....British India.”

(1) Reason for introduction of section.

The proceedings in the Council show that a suggestion was made that the provision of the English Act (S. 27) which allows the revocation of a patent on the ground that the patented article is manufactured exclusively or mainly outside the United Kingdom should be introduced into the Indian law. The Member in charge of the Bill held out little hope for the insertion of any such clause but the same was vehemently advocated by two Hon'ble Members. One of them Mr. Subba Rao said that the question is “whether persons who take out a patent should be permitted to manufacture articles abroad and import them freely into this country, simply because they have secured a patent here, or whether they should be required to work the patent exclusively or mainly in this country. This is an important question which has a great bearing on the future prosperity of this country. It is estimated that in the United Kingdom, where the new law requiring the patent to be worked in that country has been in force for the last three years, nearly if not more than, a million sterling has been invested in land, plant, and buildings. British Manufacturers have been enabled by this provision to secure licenses from foreign patentees on equitable and reasonable terms. I submit that a similar provision in the present Bill would secure similar advantages to this country. No doubt conditions here are different from those prevailing in England; but when we consider that our industrial position is rather at a low ebb such a provision will be of immense advantage to India. In fact, I submit that it would give an impetus to the industries and manufactures of this country and that it would make it easy for Indian manufacturers to obtain licenses for patents now proposed to be worked in foreign countries. I, therefore, venture to submit that this provision is imperatively necessary for this country.” The other member, the Hon'ble Mr. Madge spoke to the following effect:—“From what I have been able to gather and read on the subject, among the reasons which entered into the minds of those who framed this clause were the facts that owing to the lower labour wages of Belgium, Germany and France, a large number of products were dumped at home at cheaper rates than they could be produced in Britain. Now it may be said that because in this country the labour wages is even lower than in Europe, arguments of that kind could not apply to a country like India. But as a matter of fact those

1.—“Revocation....British India ”—(Concluded).

of us who read trade quotations will find that a great many of the articles manufactured and brought from abroad could be produced in this country if some better protection were afforded in this country. I am not an expert on this question, and I do not want to dilate upon it, but I have found—I have enquired amongst those who have more interest in the matter than I myself, and they have found, that our industries are not sufficiently protected and that a great deal is brought from abroad that might be made here, and that one of the avenues from which this evil creeps upon the country is the patent law. If that be so, I am sure the Hon'ble Member would confer a great favour upon our small Captains of industry if we give some attention to the doubts that I have tried to express.” (Proceedings in Council). K

(2) Section introduces principles of English law.

This section introduces the principle of S. 27 of the English Statute under which the Patent is liable to revocation if it is not worked in the country but subject to certain restrictions which would ensure that the patent shall not be revoked unless there is some reasonable prospect of its being worked in India. [See Report of Select Committee.] L

24. A patentee may at any time, by giving notice in the prescribed manner to the Controller, offer to surrender his patent, and the Controller may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent.

Power of Controller to revoke surrendered patent.

25. A patent shall be deemed to be revoked if the Governor General in Council declares, by notification in the *Gazette of India*, the patent or the mode in which it is exercised to be mischievous to the State or generally prejudicial to the public.

Revocation of patent on public grounds.

Legal Proceedings.

26. (1) Revocation of a patent¹ in whole or in part may be obtained on petition to a High Court on all or any of the following grounds, namely:—

Petition for revocation of patent.

- (a) that any invention included in the statement of claim is of no utility ;
- (b) that any invention included in the statement of claim was not, at the date of the application for a patent, a new invention within the meaning of this Act ;
- (c) that the applicant was not the true and first inventor thereof or the assign or legal representative of such inventor thereof ;
- (d) that the original or any amended application or specification does not fulfil the requirements of this Act ;

- (e) that the applicant has knowingly or fraudulently included in the application for a patent or in the original or any amended specification, as his invention, something which was not new or whereof he was neither the inventor nor the assign nor the legal representative of such inventor ;
 - (f) that the original or any subsequent application relating to the invention, or the original or any amended specification, contains a wilful or fraudulent mis-statement ;
 - (g) that a part of the invention or the manner in which a part is to be made and used as described in the original or any amended specification, is not thereby sufficiently described, and that this insufficiency was fraudulent or is injurious to the public.
- (2) A petition for revocation of a patent may be presented—
- (a) by the Advocate-General or any person authorized by him ; or
 - (b) by any person alleging—
 - (i) that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims ; or
 - (ii) that he, or any person under or through whom he claims, was the true and first inventor of any invention included in the claim of the patentee ; or
 - (iii) that he, or any person under or through whom he claims an interest in any trade, business or manufacture, had publicly manufactured, used or sold, within British India, before the date of the patent, anything claimed by the patentee as his invention.

(3) The High Court may, irrespective of any provisions of the Code V of 1908. of Civil Procedure, 1908, in this behalf, require any person, other than the Advocate-General or any person authorized by him, applying for the revocation of a patent to give security for the payment of all costs incurred or likely to be incurred by any person appearing to oppose the petition.

(Notes).

[N.B.— See notes under Ss. 2 & 3, *supra*.]

1.—“Revocation of patent.”

- (1) Act V of 1888, S. 30—Respondent showing cause by affidavits—Issue directed to be tried—*Onus of proof at trial*.

The applicant obtained a rule under S. 30 of the Repealed Act V of 1888 (*Of* present section) calling upon the respondent to show cause that he had not acquired exclusive privilege in a certain invention. The respondent showed cause against the rule by affidavits, but the Court instead of discharging the rule, directed the issue to be tried. *Held*—at the trial, the *onus* of proof lay on the respondent. 10 C.W.N. 985. See also 17 A. 490.

1.—“Revocation of patent”—(Concluded).

(2) S. 24—Act XV of 1859—Application by licensee under—Licensee and petitioner under Patent Act having identical interest.

A person who occupies the position of a licensee and has undertaken to manufacture machines as being the subject of an invention which has been patented, and so to make a profit out of the patent, must be taken as having admitted the validity of the patent, and as being a person who cannot as between himself and the patentee, dispute the validity or novelty of the invention or any other circumstances which go to make a valid patent. In this case, the petitioner on the record in a proceeding under S. 24 of Act XV of 1859 was found to have no real interest in the matter apart from that of the licensee, and therefore the petition was dismissed, having been taken in reality to be that of the licensee. *In the matter of Act XV of 1859, 15 C. 244.* **N**

27. (1) Notice of any petition for revocation of a patent under section 26 shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person.

Notice of proceedings to persons interested.

(2) The notice shall be deemed to be sufficiently served if a copy thereof is sent by post in a registered letter directed to the person and place for the time being stated in the register.

28. (1) A High Court may, if it thinks fit, direct an issue for the trial, before itself or any other High Court, or any District Court, of any question arising upon a petition to itself under section 26, and the issue shall be tried accordingly.

Framing issue for trial before other Courts.

(2) If the issue is directed to another High Court, the finding shall be certified by that Court to the High Court directing the issue.

(3) If the issue is directed to a District Court, the finding of that Court shall not be subject to appeal, but the evidence taken upon the trial shall be recorded and a copy thereof, certified by the Judge of the Court, shall be transmitted, together with any remarks which he may think fit to make thereon, to the High Court directing the issue, and the High Court may thereupon act upon the finding of the District Court, or dispose of the petition upon the evidence recorded, or direct a new trial, as the justice of the case may require.

29. (1) A patentee² may institute a suit in a District Court³ having jurisdiction to try the suit against any person who, during the continuance of a patent acquired by him under this Act in respect of an invention, makes, sells or uses the invention without his license or counterfeits it, or imitates⁴ it.

Suits for infringement of patents.¹

(2) Every ground on which a patent may be revoked under this Act shall be available by way of defence⁵ to a suit for infringement.

(Notes).

1.—“Suits for infringement of patents.”

(1) Infringement of Patent.

(a) A patent privilege may be infringed in several ways—

- (i) By making or manufacturing articles for use or sale by means of the art which has been invented by the patentee, or by using, exercising, or putting the art in practice, to the prejudice of the patentee in any other way.
- (ii) By vending or selling articles made in violation of the patent privilege.
- (iii) By making for use or sale, or vending articles which counterfeit, imitate, or resemble articles made in pursuance of the invention.
- (iv) By counterfeiting or imitating the invention in any other way (Hind-march's Law of Patents).
- (b) A patent is a privilege granted by the Crown, but as against subjects only, and not against the Crown; and hence the Crown may, by its officers, servants, or agents, use a patent process without compensating the patentee; but this does not extend to a tradesman who contracts to do work for the Crown, and in doing it, uses the patent process, he becomes liable to the patentee. *Dickson v. London S. A. Co.*, 1 App. Cas. 632. O
- (c) To manufacture abroad according to a process patented in India, and then import the substance for sale in India, is a violation of the patent. *Von Hyden v. Neustadt*, 14 Ch. D. 230. P
- (d) Also, importing of such an article, though not for sale yet for the purpose of experiment or instruction, is a user for advantage and an infringement. *United Telephone Co. v. Sharples*, 29 Ch. C. 164. Q
- (e) Any one who uses what is an infringement of a patent is liable, though he was only an agent or servant of another who is not himself sued. Thus, the captain of a vessel fitted with pumps which were an infringement of the plaintiff's patent, was held liable, although he was not owner of the vessel. *Adair v. Young*, 22 Ch. D. 13. R
- (f) Posting at a foreign post-office a parcel addressed to a trader in London containing an article patented in England does not constitute an infringement of the patentee's rights on the part of the sender. *Badische Anilin and Soda Fabrik v. Henry Johnson & Co.*, 13 T.L.R. 344.

(2) Evidence.

(i) WHAT MUST BE PROVED.

- (a) In order to obtain an injunction against violation of a patent, the party must, at the time of applying, swear as to his belief that he is the original inventor. *Hill v. Thompson*, 8 Mer. 622; 17 R. R. 156. T
- (b) In a suit to restrain the sale of a patented article, it is incumbent on the plaintiff not only to prove the sale, but to prove that the article was not made by himself or his agents. *Betts v. Willmott*, L. R. 6 Ch. 239; 25 L. T. 188; 19 W. R. 369. U
- (c) On an application for an injunction to restrain the infringement of a patent, the party must swear, that at the time of making the application he believes that at the date of the patent the invention was new, or had not been previously known or used in this kingdom. *Sturs v. De La Rue*, 5 Russ. 322; 7 L. J. (O.S.) Ch. 47; 29 R. R. 24. Y

I. —“Suits for infringement of patents” —(Continued).

(ii) PATENT ACTION—ONUS.

- (a) The burden of showing that the plaintiff has a cause of action lies upon him in a patent case just as much as in any other case. *Saccharine Corporation, Limited v. Wild*, (1909), 1 O. 410. **W**
- (b) There is machinery in the courts by which, within certain well-defined limits, he can interrogate his opponent. If, and so far as, the principles upon which procedure is regulated in a country do not enable a plaintiff to make out his cause of action from the lips of the defendant, the former must simply acquiesce in the burden that rests upon him. (*Ibid.*) **X**
- (c) When it is shown that a patent was granted the burden of proving that it had determined lies on the defendant. 4 A. L. J. 11. **Y**

(iii) EVIDENCE AS TO IDENTITY OF PROCESS.

The opinion of scientific witnesses as to whether there has or has not been an infringement ought to be allowed. *Seed v. Higgins*, 8 H.L. Cas. 550. **Z**

(3) Patent—Leave to withdraw action for infringement of patent, on what terms allowed.

A sued B for an injunction to restrain B from infringing his letters patent for an invention. B delivered his defence with particulars of objection, and A then delivered his reply. B gave then a notice of an application for leave to amend his particulars by stating certain alleged defects in the specification, but abandoned the application. But this notice showed plaintiff that he must correct his patent. A applied for leave to withdraw the suit. Held that A should be given leave only on his undertaking not to sue B in respect of the infringement alleged in the suit, and paying the costs of the suit, including the costs of the particulars of objection. *Robertson v. Purdey*, (1906) 2 Ch. 615. **A**

(4) When no action lies.

No action lies for a declaration of the invalidity of letters patent already expired, where no legal right of the plaintiff has been infringed. *North Eastern Marine Engineering Company v. Leeds Forge Company*, (1906) 1 Ch. 324. **B**

REMEDIES.

A.—INJUNCTION AGAINST INFRINGEMENT.

I. —Injunction when granted

(1) General principles.

Upon the invasion of a patent right, the party complaining has a right to the protection of an injunction, although the other party may promise to commit no further infringement, and may offer to pay the costs of preparing the bill; and if the defendant do not, after injunction obtained, offer to pay the costs of it, the plaintiff may bring the suit to a hearing, and will be entitled to the costs of the suit. *Quaere*, whether in such a case, the Court will give an account of damages *Geary v. Norton*, 1 De G. & Sm. 9. **C**

(2) Protection of patent rights.

- (a) In an action to restrain the infringement of a patent, a perpetual injunction will be granted when the validity of the patent and the fact of the infringement are established, if there is a probability of the infringement being repeated. *Bridson v. M'Alpine*, (1845) 8 Beav. 229. *Proctor v. Bayley* (1889) 42 Ch. D. 390, C.A. See *Lyon v. Newcastle-upon-Tyne Corporation*, (1894) 11 R.P.C. 218. **D**

I.—“Suits for infringement of patents”—(Continued).

REMEDIES—(Continued).

A.—INJUNCTION AGAINST INFRINGEMENT—(Continued).

1.—Injunction when granted—(Concluded).

- (b) Where a patent is infringed, the patentee has a *prima facie* case for an injunction, for it is to be presumed that an infringer intends to go on infringing, and also, where there has not been any infringement but an intention to infringe is shown, an injunction will be granted (*Proctor v. Bayley, supra*, per Cotton, L.J. at p. 398; and see *Dunlop Pneumatic Tyre Co. v. Neal*, (1899) 1 Ch. 807. E

(3) Before infringement.

- (a) A patentee can sustain an action for an injunction to restrain a threatened infringement of his patent, even if no actual infringement has taken place. *Frearson v. Los*, 9 Ch. D. 48; 27 W.R. 183. F
- (b) When articles which are subject of a patent are made without a license from the patentee simply for the purposes of *bona fide* experiments, those who so make them are not necessarily liable to an action; but when they are made and used for profit, or with the object of obtaining profit even to a limited extent, such making and using constitute an infringement of the patentee's rights, and will be restrained by injunction. (*Ibid*). G

(4) When patent has expired.

Injunction generally granted to restrain the sale both before and after the term limited by the patent, of machines piratically manufactured, while the patent was in force. *Grossley v. Derby Gas Light Co.*, 1 Russ and M. 166. See also S.C., 4 L.J. Ch. 25. H

II.—Injunction when refused.

(1) Perpetual injunction.

- (a) An injunction cannot be granted in respect of a patent which has expired. *Saccharin Corporation, Ltd. v. Quincey*, (1900) 2 Ch. 246, 249. I
- (b) So also when an action is brought immediately before the expiration of a patent, an injunction will, as a general rule, be refused. *Betts v. Gallais*, (1870) L.R. 10 Eq. 392; see *Welsbach Incandescent Gas Light Co., Ltd. v. New Incandescent (Sunlight Patent) Gas Lighting Co., Ltd.*, (1900) 17 R.P.C. 237, 254; but compare *Grossley v. Beverley*, (1829) 1 Russ. & M. 166, n (where a defendant, who had a large stock of pirated articles ready to be thrown on the market as soon as the patent expired, was restrained). J

(2) Trade name—Similarity—“Likely to deceive”—Descriptive or fancy name—Secondary meaning—Injunction.

The plaintiff Company having commenced business and brought in 1902 the rights of a patentee called Booth who invented and patented in 1901 a peculiar cleaner of dust, etc., from carpets by 'suction caused by a vacuum, the suction operating through pipes the nozzles of which were moved over the carpets, and the dust collected by means of suction being carried outside the building . . . in some receptacle of the machine' and who called the cleaner 'vacuum cleaner' and the method 'vacuum cleaning' sought to restrain by injunction the defendant Company, who having started business in 1906 bought the rights of

1.—“*Suits for infringement of patents*”—(Continued).

REMEDIES—(Continued).

A.—INJUNCTION AGAINST INFRINGEMENT—(Continued).

II.—Injunction when refused—(Concluded).

another patentee called Birtwistle who invented and patented in 1904 a new vacuum cleaner which also acted by means of suction created by a vacuum through pipes and nozzles but being different in material parts from Booth's process and being more advantageous than Booth's was held not to be an infringement of Booth's patent, from using their (Defendants') name or any name of which 'Vacuum cleaner' formed a part, on the ground of deception and possible deception from similarity of Company name :

Held, that plaintiffs were not entitled to an injunction for the following reasons :—(i) "The inventor (Booth) must have known, when he applied a generic description to his machinery and his process that other people might devise and bring upon the market other means of vacuum—cleaning not protected by his patent—in fact different species of the same genus;" 'Vacuum cleaner' was merely a 'descriptive' and not a 'fancy' name, which had not acquired in the market any secondary meaning, *vis.*, that it was a cleaner which belonged to and was sold by the plaintiffs; (ii) plaintiffs also licensed for consideration several subsidiary independent companies of various names to sell their 'vacuum cleaners;' (iii) the *onus* of proof with regard to the existence of a secondary meaning for descriptive terms and phrases is very heavy on those who assert it and is not easily discharged; (iv) there was no such proof in the case; and (v) and there was no proof that any one was deceived or that defendant deceived any one.

Held, also, that in considering whether a name (of a company) is likely to deceive, having regard to the existence of a similar name on the Register (Patent Register) the principles which are applicable in ordinary cases of passing off, where the question is whether a trade name or a trade description, etc., is or is not likely to deceive, ought to be taken as a guide. (*Cellular Clothing Company v. Maxton and Murray*, (1899) A.C. 326, 346, *Followed*; *British Vacuum Cleaner Coy., Ltd. v. New Vacuum Cleaner Coy., Ltd.*, (1907) 2 Ch. 312. K

III. Injunction when suspended.

Suspending the injunction pending an appeal.

(a) The operation of the injunction may be stayed pending an appeal. *Kaye v. Chubb & Sons*, (1886), 4 R.P.C. 23; *Ducketts, Ltd. v. Whitehead*, (1896) 13 R.P.C. 187, 191. L

(b) But as a general rule, an application for this purpose will be refused, even where a stay would be for the benefit of the public. See *Otto v. Steel*, (1866) 3 R.P.C. 109, 121, C.A.; *Proctor v. Dennis*, (1887) 4 R.P.C. 333, 363, C.A.; and see *National Opalite Glazed Brick and Tile Syndicate, Ltd. v. Ceralite Syndicate, Ltd.*, (1896) 13 R.P.C. 649, 658; *Lyon v. Goddard* (2), (1898) 10 R.P.C. 348, C.A.; In *Hopkinson v. St. James and Pall Mall Electric Light Co., Ltd.*, (1893) 10 R.P.C. 46, the operation of the injunction was stayed by agreement on the ground of public convenience. M

1.—“Suits for infringement of patents”—(Concluded).

REMEDIES—(Concluded).

A.—INJUNCTION AGAINST INFRINGEMENT—(Concluded).

III.—Injunction when suspended—(Concluded).

- (c) Where the injunction is stayed the defendant is usually required to keep an account, or give security, and to enter the appeal forthwith. *National Opalite Glazed Brick and Tile Syndicate, Ltd. v. Ceralite Syndicate, Ltd.*, *supra*. See also *Hopkinson v. St. James and Pall Mall Electric Light Co., Ltd.*, *supra*; *Ducketts, Ltd. v. Whitehead*, *supra*. N

B.—“DAMAGES.”

(1) General principles.

- (a) The plaintiff in a patent action is, strictly speaking, entitled to recover such an amount of damages as will fairly compensate him for the injury which he has sustained by reason of the wrongful acts of the defendant proved at the trial. The measure to be applied in assessing damages for infringement of a patent is the pecuniary loss actually sustained by the patentee through the infringement, and no more. *Bagot Pneumatic Tyre Co. v. Olipier Pneumatic Tyre Co.*, (1901) 1 Ch. 122. O
- (b) In order to recover substantial damages in a patent action, it will be necessary for the plaintiff to give such evidence as will enable the Court to estimate the extent of the loss and injury which he has sustained; and in the absence of such evidence, the plaintiff is not entitled to more than nominal damages. *Minter v. Mover*, 1 Weba. R. 138: P
- (c) The damages are to some extent matter of calculation by taking an account of the profits, which have arisen from the use of the invention, from the person who has pirated the same.
- (c-1) Where a patentee has been in the habit of granting licenses at a certain royalty, the measure of damages will be the amount of royalty which ought to have been paid, but it will not include a manufacturing profit. *Penn v. Jack*, L.R. 5 Eq., 18; 2 All. 368; 115 P.R. 1889; 24 P.R. 1896. Q
- (d) A plaintiff cannot pray for an account of profits and for damages. He must elect between the two remedies. R

(2) Ss. 23, 34, Act XV of 1859—Suit for infringement of patent—Measure of damages—Ascertainment of damages before decree.

In a suit for damages for infringement of a patent, the measure of damages, where the plaintiff has been in the habit of licensing other persons to use his patent at a fixed royalty, would be the loss of such royalty sustained by him from the date of infringement. When, in a suit for damages for infringement of a patent, the defendant pleads want of novelty, but omits to mention, in his statement the places where the invention was publicly used prior to the date of plaintiff's petition for leave to file the specification, he cannot adduce evidence that the invention was publicly used in such places. The plaintiff is not bound, in such a case, to call upon the defendant, before trial, to supply particulars as to such places, nor can the plaintiff's omission to do so give the defendant the right to adduce such evidence. *Held*, further, that when, in such a case, the Court decides that the plaintiff is entitled to damages, it must assess the same in the first instance, so that they may become part of the decree, and must not leave them to be ascertained at the time of the execution. *Sheen v. Johnson*, 2 A. 368. S

2.—“Patentee.”

Who may sue.

- (a) An exclusive licensee of a patent has a right to use the name of a patentee to restrain any infringement of the patent, and an interlocutory injunction for that purpose will, in a proper case, be granted. *Renard v. Levinstein*, 2 H. & M. 628; 11 L.T. 766; 13 W.R. 382. T
- (b) A licensee of a patent from the inventor is entitled to maintain a suit for its infringement. 4 A.L.J. 11. U

3.—“District Court.”

“District” and “District Court,” meanings of.

The expression “District Court,” includes High Court in the exercise of its ordinary original civil jurisdiction. 12 C.W.N. 446. Y

4.—“Makes, sells or uses the invention without his license or counterfeits it, or imitates.”

(1) Application of known principles.

It is not open to any person under the patent laws to appropriate a principle though any particular application of a principle may be entitled to protection. Where a bicycle tyre embodied an essentially different application of the same principle as was involved in a patented tyre, it was held that there was no infringement. *Pneumatic Tyre Co. v. Tubeless Pneumatic Tyre and Capon Heaton, Ltd.*, 16 Rep. Pat. Cas. 77; 15 T.L.R. 105. W

(2) Infringement of one of several parts.

- (a) Where a patent is for an invention consisting of several parts, the imitation of any part of the invention is an infringement of the patent. *Smith v. L. & N.W. Ry.*, 2 El. & Bl. 69; 17 Jur. 1071. X
- (b) An infringement of any part of a patent process is actionable, if that part is of itself new and useful, so that it might be the subject matter, of a patent, and is used by the infringer to effect the object proposed, either wholly or partially, by the patentee. *Bottle Envelope Co. v. Seymour*, 5 C.B. (N.S.) 164; 28 L.J. C.P. 22; 5 Jur. (N.S.) 174. Y
- (c) (i) A valid patent for an entire combination for some process, gives protection to each part thereof which is new and material for that process. An infringement as to a part gives a cause of action for damages. (*Parkes v. Stevens* (1869), L.R., 8 Eq. 358, F.); 26 A. 96=23 A.W.N. 193. Z
- (ii) In the case of *Parkes v. Stevens*, (1869) L.R. 8 Eq. 358, *James, V.C.* (at p. 367) aptly states the law as follows:—“The cases establish that a valid patent for an entire combination for a process gives protection to each part thereof which is new and material for that process, which is really nothing more than stating in other terms that you not only have no right to steal the whole, but you have no right to steal any part of a man's invention, and the question in every case is a question of fact: is it really and substantially a part of the invention.” 26 A. 96 (100). A

(3) Sale of component parts of infringing machine.

Semble, that an injunction granted to restrain the sale of a complete machine, the subject of a patent, will be violated by a sale of the component

4.—“*Makes, sells or uses the invention without his license or counterfeits it, or imitates*”—(Continued).

parts of the machine in such a way that they can easily be put together by any one. *United Telephone Co. v. Dale*, 58 L.J. Ch. 295; 25 Ch. D. 778. B

(4) **Manufacture and sale of component part of a combination patent.**

The mere manufacture and sale of an article, part of a combination patent, is not an infringement of that patent even if the article has no use except for the purpose of infringement. [*Townsend v. Haworth* (48 L.J. Ch. 770n; 12 Ch. D. 831n.), *Followed*; *Sykes v. Howarth* (48 L.J. Ch. 769; 12 Ch. D. 826), *Distinguished*.] *Dunlop Pneumatic Tyre Co. v. Moseley*, 73 L.J. Ch. 417; (1904) 1 Ch. 612; 91 L.T. 40; 52 W.R. 454; 21 Rep. Pat. Cas. 274; 20 T.L.R. 314—C.A. C

(5) **Infringement of combination.**

(a) A patent for an entire combination is not infringed by a different combination, for the same object, of the same elements, though important, or of equivalents for them, if not a mere colourable evasion or imitation. *Curtis v. Platt*, 35 L.J. Ch. 852; L.R. 1 H.L. 337. D

(b) A patent for a combination of known mechanical contrivances producing a new result: *Held*, to be infringed by a machine producing the same result by a combination of mechanical equivalent of the above contrivances, with some alterations and omissions, which did not prevent the new machine from being one which took the substance and essence of the patent invention. *Curtis v. Platt, supra D.*; *Proctor v. Bennis, ante*, 57 L.J. Ch. 11. E

(c) If a patent is taken out for an invention by means of a combination, the use of a subordinate part of the combination is no infringement of the patent, unless such part is new and material. *White v. Fenn*, 15 L.T. 505; 15 W.R. 348. F

(d) When a combination of instruments is the invention patented an infringement of the patent must be an infringement of the combination. *Dudgeon v. Thompson*, 3 App. Cas. 34. G

(6) **Distinct object.**

(a) A patent for a mechanical arrangement whereby a particular operation may be performed for a particular purpose, the mechanical contrivances so arranged not being new in themselves, but thus first combined for that particular purpose, is not infringed by the adoption of the same arrangement or combination of mechanical contrivances for a similar purpose, if the mode of operation is sufficiently distinct and different in principle from that which was described or claimed in the patent, and the object achieved is also sufficiently distinct or novel, and does not form an essential part of the patent. *Saxby v. Ghunes*, 43 L.J. Ex. 228. H

(b) The principle of an invention for simultaneously moving railway points and making it possible to move the signal lever, is not equivalent to the principle of simultaneously moving the signals and points. (*Ibid.*) I

(7) **Different process with same elements.**

(a) When a patent has been obtained for the use of a known substance, described by its specific name, and it is afterwards discovered that the use of two other and equally known substances will produce the same

4.—“*Makes, sells or uses the invention without his license or counterfeits it, or imitates*”—(Continued).

effect, though the evidence of scientific men may go to show, that the two substances became, in the act of so using them, the one substance described in the patent, their use will not constitute an infringement of the patent. *Unuri v. Heath*, 5 H.L. Cas. 505. J

(b) A patent for the use of a substance in a process is infringed by the use of a chemical equivalent, known to be so at the time of the use, if used for the purpose of taking the benefit of the patent, and of making a colourable variation therefrom. (*Ibid.*) K

(c) Where a patent is obtained for the use of particular chemical materials for arriving at a particular chemical result, it is no infringement to arrive at the same result by the use of other chemical materials which were not known to be equivalents for the materials mentioned in the specification at the time when the patent was obtained. *Badische Anilin und Soda Fabrik v. Levinstein*, 52 L.J. Ch 704; 24 Ch. D. 156; 48 L.T. 822; 31 W.R. 913; *Affirmed*, 12 App. Cas. 710 H.L. (E). L

(d) Where a patent is obtained for a new process for arriving at a known result, it is no infringement to arrive at the same result by a different process. (*Ibid.*) M

(e) Where a patent is obtained for a new result and one process of arriving at that result is described in the specification, it is an infringement to produce the same result by any process. (*Ibid.*) N

(8) **Colorable imitation.**

In determining whether a defendant has infringed the plaintiffs' patent, the Court will regard the substance of the invention, and if the defendant has infringed the substance of the invention, although he may have made immaterial variations or used mechanical equivalents, an injunction will be granted. *Thorn v. Worthing, Skating Rink Co*, 6 Ch. D. 415 n. O

(9) **Infringement—Article manufactured out of the infringing article.**

The manufacture and sale of an article made out of a material, the making of which infringes patent, is also an infringement of the patent and must be restrained by an injunction. However much the article may completely change the nature of the material, the material itself is obtained by infringing the patent and the plaintiffs are indirectly deprived of the benefit of their invention by the use made of it by the defendants. *Saccharin Corporation, Limited v. Anglo Continental Chemical Works*, (1901) 1 Ch. 414. P

(10) **Infringement by workmen.**

(a) The directors of a company are personally responsible for the infringement of a patent by their workmen, notwithstanding such infringement may be in contravention of orders. *Betts v. De Vitre*, 37 L.J. Ch. 325; L.R. 3 Ch. 429; 18 L.T. 165; 16 W.R. 529; S.C. in H. L. Sub. nom. *De Vitre v. Betts*, L.R. 6 H.L. 319; 31 W.R. 705. Q

(b) Where the principals of a firm, which had infringed a patent were out of the jurisdiction, and not amenable to the process of the Court, the Court restrained the managers, who, though out of the jurisdiction, had appeared to the bill. *Betts v. Neilson*, 6 N.R. 221; 12 L.T. 719; 13 W.R. 1028—L.J.J. R

4.—“*Makes, sells or uses the invention without his license or counterfeits it, or imitates*”—(Continued).

(11) What is user of patent.

- (a) The merely “exhibiting to sale” imitations of an invention is not any infringement of the patent. *Minter v. Williams*, 5 N. & M. 647; 4 A. & E. 261; 1 H. & W. 585; 5 L.J.K.B. 60. S
- (b) But the manufacture of a patent article for the purpose of sale and offering it for sale, although no sale is actually effected, is a user of the invention. *Oxley v. Holden*, 8 C. B. (N. S.) 666; 30 L.J.C.P. 68; 2 L.T. 464; 8 W.R. 626. T
- (c) It is sufficient to constitute user of a patented article, that the same sort of benefit, however temporary and indirect, has been in fact derived from it in its ordinary use. It is immaterial from it in its ordinary use. It is immaterial whether the use of the article is active or passive. *Betts v. Neilson*, 3 De. G.J. & S. 82; 34 L.J. Ch. 537; 11 Jur. (N.S.) 679; 12 L.T. 719; 13 W.R. 1038; 6 N.R. 221; S.C., in H.L. 40 L.J. Ch. 317; L.R. 5 H.L. 1; 19 W.R. 1121. U

(12) Use not for purposes of profit.

The precipitation of animal and vegetable matter from sewage water, by means of hydrate of lime, for agricultural purposes is a good subject-matter for a patent; and if another person uses the same process and obtains profit, but for the purpose solely of deodorising and purifying the sewage water, he is not guilty of an infringement of the patent. *Higgs v. Goodwin*, El. B. & El. 529; 27 L.J., Q.B. 421; 4 Jur. (N.S.) 258. Y

(13) Patent—‘Exercise and vend.’

An English trader, who delivers a patented article to an English importer at a Foreign port in pursuance of a contract made in England, does not ‘make use, exercise, or vend’ the protected invention within the realm. *Badische Anilin und Soda Fabrick v. Hickson*, (1906) A.C. 419. W

(14) Patent, infringement of—Nature of exclusive privilege granted to patentee—Act XV of 1859 and Act V of 1888—“Make, sell or use”—Exclusive privilege acquired for process of producing certain article—Article manufactured without, but sold within limits of exclusive privilege—“Town and station of Rawalpindi.”

One B was granted under S. 4 of Act XV of 1859, the sole and exclusive privilege of making, selling and using in British India, certain kilns for the manufacture of bricks, and of authorizing others to do so. Sometime thereafter plaintiff obtained by assignment from Messrs. P. D. a license from the said B granting him the sole and exclusive privilege of using patent kilns “within the town and station of Rawalpindi.” Subsequently defendant, who had also obtained a license from the said B’s agent authorizing him to use one patent kiln at any place in the district of Rawalpindi except within the cantonment and municipal limits of Rawalpindi, set up one such kiln on the outskirts of but admittedly not within the limits of the cantonment and municipality of Rawalpindi. Plaintiff, thereupon, instituted a suit for damages for breach of his patent rights under his license, and his claim was decreed in the first Court but dismissed by the Divisional Judge on appeal. Plaintiff appealed to the Chief Court, and it was contended,

4.—“Makes, sells or uses the invention without his license or counterfeits it, or imitates” —(Concluded).

on his behalf, that (i) the words “town and station” in his license included places where kilns meant for the supply of the town and station were situated, or, at any rate, those places at which kilns were constructed when the exclusive privilege was originally granted to Messrs. P.D. his predecessors in title, and (ii) although the defendant was entitled to use his one kiln outside the limits of plaintiff’s exclusive privilege, yet a sale by defendant within those limits of bricks manufactured in the said kiln outside the said limits constituted an infringement of plaintiff’s said exclusive privilege.

Per Curiam.—The words “town and station of Rawalpindi,” in plaintiff’s license, should be strictly construed, and did not include the place at which defendant had set up his kiln. 24 P.R. 1896. **X**

(15) Act XV of 1859, Ss. 3, 22 and 34—Measure of damages—Royalty—Infringement—Jurisdiction—Detail of breaches.

In a suit for damages for infringement of a patent, the defendant pleaded that the plaintiff’s privilege did not extend to the Punjab. It was found that only Bengal, the North Western, and the Central Provinces were mentioned in the specification filed under the Act.

Held, that these Provinces were only mentioned as places where the invention was likely to be useful, that it was never intended that it might be counterfeited in any other part of India, and that under S. 4 of that Act the exclusive privilege was given for the whole of India, notwithstanding anything contained in the specification, and that any person infringing the privilege was liable in any part of India.

(b) That evidence should not be received of any breaches other than those entered in a schedule prescribed by S. 34 of that Act. *Held*, that the object of giving instances is to prove the infringement, and that other instances of purchases, sales or hiring could be enquired into to determine the amount of damages.

(c) That he had not infringed the patent. It was found that he had bought portions of machines from persons licensed by plaintiffs and put them together; that he had bought rollers from unlicensed persons and whole machines from persons not licensed—*Held* that these acts constituted a sufficient infringement. 115 P.R. 1889. **Y**

5.—“Every ground....by way of defence.”

I. Objections.

(1) Principles.

(a) The principle upon which the Court proceeds in regulating the form of particulars of objections on the trial of a patent is to guard against a surprise upon the plaintiff by production on the trial of evidence of prior user or publication of which he has no notice. Therefore, it will require a defendant, in stating those instances on which he intends to rely to put the plaintiff in possession of all he himself knows, so far as to enable him to identify the instances alleged. *Curtis v. Platt*, 8 L. T. 657. **Z**

(b) A plaintiff, in a suit to restrain an infringement of a patent, who has filed replication, and issues have been refused is not entitled to require the defendant, by analogy to the practice at law, to deliver particulars of his objections to the validity of the patent. *Bovill v. Goodier*, 35 Beav. 264; 35 L.J. Ch. 174; 11 Jur. (N.S.) 900; 13 L.T. 489; 14 W.R. 91. **A**

5.—“Every ground....by way of defence”—(Continued).

1. Objections—(Continued).

(2) Sufficiency.

- (a) A particular of objection must be precise and definite ; it is not sufficient to say that the improvements, or some of them have been used before ; the defendant should point out which. *Fisher v. Dewick*, 4 Bing. (N.C.) 706 ; 6 Scott. 587 ; 6 D.P.C. 739 ; 1 Arn. 282 ; 7 L.J. C.P. 279. **B**
- (b) The notice of objection ought to contain more particular information than that which is necessarily conveyed by the pleas. *Jones v. Berger*, 5 Man & G. 208 ; 6 Scott (N.R.) 208 ; 12 L.J.C.P. 179 ; 7 Jur. 889 ; S.P. *Betts v. Walker*, 14 Q.B. 363. **C**
- (c) A defendant cannot, by his notice of objections, go beyond his pleas. *Macnamara v. Hulse*, Car. & M. 471. **D**
- (d) Where the defendant in a patent action objects to the validity of the plaintiff's patent on the ground that there is want of conformity between the provisional and complete specifications, it is not sufficient for him to state in his particulars of objection that the invention described in the complete specification is not the same as the invention described in the provisional specification ; he must state in what the difference consists. *Anglo American Brush Electric Light Corporation v. Crompton*, 56 L.J. Ch. 167 ; 34 Ch.D. 152 ; 55 L.T. 722 ; 35 W.R. 125. **E**
- (e) When a defendant pleads that the patentee was not the first inventor, and that the alleged invention was not new, he is not bound to state in his objections who was the first inventor, or under what circumstances the alleged improvements had been used previously. *Russell v. Led-sam*, 11 M. & W. 647 ; 1 D. & L. 347 ; 13 L.J., Ex. 439 ; 7 Jur. 585 ; *Heath v. Unwin*, 2 D. (N.S.) 482 ; 10 M. & W. 684 ; 13 L.J. Ex. 46 ; 6 Jur. 1068 ; S.P. *Bulnous v. Mackenzie*, 4 Bing. (N.C.) 127 ; 6 D.P.C. 215 ; 5 Scott 489 ; 7 L.J.C.P. 33. **F**
- (f) Notices of objection were, first, that the patentee did not, by the specification, sufficiently describe the nature of the invention ; secondly that he had not caused any specification sufficiently describing the nature of the invention to be enrolled : *Held*, that the last objection was not sufficiently precise. *Leaf v. Tophan*, 2 D. & L. 863 ; 14 M. & W. 146 ; 14 L.J. Ex. 231. **G**
- (g) The Court has a general power to order a particular of the alleged infringements. *Electric Telegraph Co. v. Nott*, 4 C.B. 462 ; 16 L.J.C.P. 174 ; 11 Jur. 590. **H**
- (h) Where a defendant relies on a general user of the supposed invention, it is sufficient to state in his particulars of objections that the invention was used by manufacturers generally at a particular place, without naming any person or specifying any manufactory. *Palmer v. Wagt staff*, 8 Ex. 840 ; 22 L.J. Ex. 295 ; 17 Jur. 581 ; 1 W.R. 436. **I**
- (i) If the objections are not sufficiently specific, the plaintiff's course is to apply to a Judge for an order for the delivery of a more specific notice ; but if he omits to do so he cannot object to the generality of the notice at the trial ; the only question then is, whether the notice is sufficiently large to include the objections on relief by the defendant. *Neilson v. Harford*, 8 M. & W. 806 ; 11 L.J. Ex. 20. **J**

5.—“Every ground....by way of defence”—(Continued).

I. Objections—(Continued).

(j) If the particulars of objections delivered with the pleas are too general, the party who means to object to them must procure an order for better particulars. *Hull v. Bollard*, 1 H. and N. 184; 25 L.J. Ex. 304. **K**

(k) The Act does not prevent defective particulars from being available at the trial, and the plaintiff cannot resist the admission of evidence which is within the literal meaning of the particulars, on the ground that the statement is too general, and that the particulars do not give the required information as to the place in which the invention is alleged to have been used. (*Ibid.*) **L**

(3) Patent—Action for infringement—Judgment—Revocation pending inquiry—Estoppel.

A patentee brought an action for infringement of patent. Defendants objected, but their objections were overruled, and the plaintiff got an order for inquiry as to damages. Pending the inquiry, the defendants got a revocation of the patent on the very grounds urged in the action: *Held*: The defendants were estopped by the judgment against them from raising objections to the validity of the patent, and the plaintiff was entitled to substantial damages notwithstanding the revocation of the patent. *Poulton v. Adjustable Cover and Boil Stock Co.*, (1908) 2 Ch. 430 (C.A.). **M**

(4) Particulars of breaches—Suit for compensation for infringement of patent.

In a suit for damages for infringement of a patent, unless the plaintiff has delivered with a plaint the particulars of breaches of the patent complained of, he cannot prove such particulars, and the case cannot be tried. A mere general allegation that the patent had been infringed cannot amount to such particulars. 5 A. 371=A.W.N. 1883, 62. **N**

(5) Particulars of infringement required to be given under.

§. 34 of the Patent Act (XV of 1859) provides for the particulars of breaches to be delivered by a plaintiff in an action for infringement. The sole object of the enactment is to give the defendant fair notice of the case which he has to meet; and it is quite immaterial whether the requisite information be given in the plaint itself or in a separate paper. Further, in such a case, the defendant cannot move for an order on the plaintiff to specify in detail in what respects the patent has been infringed. Between the above particulars of breaches required to be given by the plaintiff and the particulars of objection to be delivered by the defendant under his plea of want of novelty, there is always the distinction that, in the latter case, but not in the former, the Court requires the particulars to condescend upon the particular instances, the reason being that in the one case, the matter is not in the knowledge of the patentee, whereas in the other the defendant must know whether and in what respects he has been guilty of infringement. 9 A. 191, F.C.=13 I.A., 124. **O**

(6) Certain defences to an action barred—Inteption of legislature.

The legislature intended that objections indicated in §. 29 (2), (3) and (4), Act V of 1888 should not be allowed to be raised in defence to an action for the infringement of an exclusive privilege acquired under Part. I of

5.—“Every ground....by way of defence”—(Continued).

I.—Objections—(Concluded).

the Act but must be raised under the provisions of Ss. 80 and 81 of that Act, by applying to a High Court for a rule to show cause why the Court should not declare that the exclusive privilege so acquired had not been so acquired, by reason of the objections mentioned in the two latter sections. 12 C.W.N. 446. P

II.—Pleadings.

(1) General.

(a) A plea that the invention is not a new manufacture within 21 Jac. 1 c. 8, involves the question, not only whether it is a manufacture within the meaning of the statute. *Walton v. Bateman*, 3 Man. & G. 773; 4 Scott (N.R.) 397. Q

(b) To a declaration stating that the plaintiff was the first inventor of a new manufacture, and that the defendant infringed his patent right a plea that the invention was not a matter for which letters patent would by law be granted, does not put in issue the novelty of the invention. *Booth v. Kennard*, 1 H. & N. 527; 26 L.J. Ex. 23; 9 Jur. (N.S.) 21; 5 W.R. 85. R

(c) To an action for the infringement of a patent for improvements in a cabriolet, the general issue, that the improvements were not new and that the plaintiff was not the true and first inventor, were pleaded:—*Held*, that, on this state of the pleadings, it could not be contended that the patent was illegal, as being a monopoly. *Gillett v. Wilby*, 9 Car. & P. 334. S

Held also, that though all the improvements claimed must be shown to be new, yet it need not be shown that the defendant's cabriolet was an imitation of the whole of them; but an imitation of one was sufficient to maintain the action. *Gillett v. Wilby*, 9 Car. & P. 334. T

(d) Upon an issue of not guilty to an action for infringement of a patent, the question whether there was a fraudulent evasion of the patent does not arise. *Stead v. Anderson*, 4 C.B. 806; 16 L.J.O.P. 250; 11 Jur. 877. U

(e) In determining whether a defendant has infringed a patent no question arises as to his intention, but only as to his acts. (*Ibid.*) Y

(2) Plea allowed.

(a) On a motion for an injunction to restrain the alleged infringement of a patent the defendant insisted, first, on the validity of the patent; and an action was directed. Afterwards, the defendant pleaded in equity simply the want of novelty of the patent. This Court on allowing the plea gave the plaintiff liberty to apply to modify the order made on the application for the injunction, so as to make it conformable to the issue tendered by the plea. *Young v. White*, 17 Beav. 532. W

(b) The Court refused to strike out a plea, that the instrument in writing in the declaration mentioned did not particularly describe and ascertain the nature of the invention in the letters patent. *Clark v. Kenrick*, 12 M. & W. 219. X

(c) In an action by the assignee of a patent for an infringement, non concessit is a good plea. *Bunnett v. Smith*, 2 D. & L. 380. Y

5.—“Every ground....by way of defence”—(Continued).

11.—Pleadings—(Continued).

(d) A declaration alleged that the plaintiff was the inventor and the grantee of the patent; plea *non concessit*:—*Held*, that the plaintiff having, at the trial, put in the letters and specifications, and shown the novelty of the invention, was entitled to a verdict, on the issue joined on the plea. *Nickels v. Ross*, 8 C.B. 679. Z

(e) A plea alleging that the plaintiff falsely represented to the Queen that the invention was an improvement; that Her Majesty, confiding in such representation, made the supposed grant; that such representation was false; and that the invention was not an improvement, might properly be pleaded with a plea that the invention was of no use to the public, the two pleas not being substantially the same. *Bedells v. Massey*, 7 Man and G. 630; 8 Scott (N.R.) 397; 13 L.J., C.P. 173; 8 Jar. 808. R

) The Court allowed—first, not guilty; secondly, the patentee not the inventor; thirdly, *non concessit*; fourthly, the invention not a manufacture; fifthly, the invention not new; and, sixthly a traverse of the specification, on an affidavit of the defendant's attorney, that he was advised and believed that the defendant had just ground to traverse the several matters. *Platt v. Elce*, 8 Ex. 364; 22 L.J., Ex. 192; 17 Jur. 188. B

(g) The Court will at any time during the progress of a patent suit allow a defendant to raise a fresh issue on the discovery of facts which could not with due diligence have been discovered before. *Holste v. Robertson*, 46 L.J., Ch.1; 4 Ch.D. 9. C

(h) In an action for an infringement of a patent, for six distinct improvements in an old machine, the defendants were allowed to plead that two parts of the invention were not, nor was either of them a new manufacture. *Bentley v. Keyhley*, 6 Man & G. 1039. D

(3) Plea disallowed.

(a) Plea alleging that parts of the invention were previously known, and are not the subject of letters patent, will not be allowed with pleas denying the novelty of the invention as a whole and that the invention was a new manufacture within the meaning of the 21 Jac. 1, C. 3. *Walton v. Bateman*, 4 Scott (N.R.) 397; 3 Man & G. 773. E

(b) In an action for an infringement of a patent, for six distinct improvements in an old machine, the defendants were allowed to plead that two parts of the invention were not, nor was either of them, a new manufacture within the statute of James. But the Court refused to allow them to plead, that, as to a part, A was the first and true inventor; and that, before the grant of the patent, A and others publicly used and exercised in England a part of the invention. *Bentley v. Keighley*, 6 Man. & G. 1039; 7 Scott (N.R.) 987; 1 D and L. 944; 13 L.J., C.P. 167. F

(c) In an action for infringing a patent, to which a disclaimer as to part has been entered, the defendant will not be allowed to plead that the whole invention was not new, and as also that the undisclaimed part was not new. *Clark v. Kenrick*, 12 M & W. 219; 1 D and L. 892; 13 L.J., Ex. 6. G

5.—“Every ground....by way of defence”—(Concluded).

11.—Pleadings—(Concluded).

- (d) The Court disallowed a plea that the plaintiff, having petitioned for letters patent, represented to the Solicitor-General, to whom the matter was referred, that the invention consisted of matters mentioned in a paper-writing exhibited to the Solicitor-General, who, confiding therein, reported that the letters patent might be granted; that after the grant, the plaintiff enrolled his specification and falsely described his invention therein, and that so much of the invention as was stated in the specification was not part of the invention in the paper-writing and letters patent mentioned, and was not part of the invention for which the letters patent were granted. *Hancock v. Noyes*, 2 C.L.R. 1060; 9 Ex. 388; 23 L.J., Ex. 110. H
- (e) In an action by an assignee, a plea that the property is not vested in him is bad, as embarrassing, and will be set aside. *Cottula v. Soames*, 3 F and F, 93. I
- (f) A plea which refers for explanation to drawings not traced on the record, but annexed to it, is inadmissible. *Betts v. Walker*, 14 Q.B. 363; 14 Jur 647. See *Sealy v. Browne*, 14 L.J.Q.B. 169; 9 Jur. 637. J
- (g) A plea that the invention is not of such use to the public as to make it a sufficient consideration for the grant of the letters patent is bad. (*Ibid*). K
- (h) In a suit for infringement it is not open to the defendant to plead that the invention was so obvious that no exclusive privilege ought to have been granted. 4 A.L.J. 11. L

(Miscellaneous.)

(1) Practice—Patent action—Shorthand notes—Payment by Solicitor—Solicitor's right to recover from client.

The question in this appeal was whether a solicitor was entitled to recover from his client money paid by him for taking shorthand notes in a patent action. At the beginning of the trial the Judge asked whether a shorthand note was to be taken. After some discussion the solicitors on both sides agreed with the concurrence of the judge that a shorthand note was to be taken and should constitute the record in the cause and that the parties should share the expense of having it taken. The solicitor paid a moiety of the costs and now sought to recover it from his clients. On the clients' objection both the master and the judge in chambers refused to include this item in the taxation of costs. The objection was based upon the ruling in *re Blyth and Fanshawe*, 10 Q.B.D. 207, that where the cost about to be incurred is unusual and may not be allowed between party and party, the solicitor should inform, and take the permission of, his client beforehand or he will not be entitled to charge his client with the cost so incurred.

The Court of Appeal (A.L. Smith and Vaughan Williams, L. JJ.) held that the solicitor was entitled to charge his client with this item of costs.

A.L. Smith, L.J., said that in patent actions which usually involve very complicated and scientific details the cost of taking shorthand notes was not at all unusual and that the clear effect of the agreement between the parties with the sanction of the Court was to make the costs of taking shorthand notes costs in the cause and that therefore the ruling quoted had no application to the case.

(Miscellaneous)—(Concluded).

Vaughan Williams, L.J., added that apart from the consideration that the cost was not unusual and was chargeable between party and party, there was this additional fact that the shorthand notes constituted the authentic record in the case and were, as such used by the Judge and that the solicitor was entitled to charge his client with any costs incurred by him in supplying authentic records for the use of the Judge. *Osmond v. Mutual Cycle and Manufacturing Supply Co.*, (1899) 2 Q.B. 488 C.A. M

(2) Patents—Sale for £5,000 and royalties—Vendor's lien in respect of unpaid royalties.

Plaintiffs sold some patents to Snell for £5,000 and certain royalties, the latter guaranteeing certain minimum royalties during the continuance of the patents, the whole to become payable in case of default in respect of any minimum. Subsequently Snell sold the patents to a company who had knowledge of the plaintiffs' agreement and paid also the minimum royalty due for one year. But soon after Snell repudiated the agreement; plaintiffs accordingly brought an action for the royalties—against Snell as damages—against the Company, as purchase-money for which they claimed a vendor's lien.

Held, though upon the construction of the pleadings the plaintiffs had not irrevocably elected to rescind the agreement they could not sue both in damages for the breach and also for the consideration.

Held also, the plaintiffs had a vendor's lien on the patent for unpaid minimum royalties. "The obligation to fulfil the terms of the agreement being with regard to the assignees not personal but attached to the property which they acquired with notice of the terms upon which it was held by their assignor, disabled them from holding the property without fulfilling the terms. Upon the construction of the agreement, it was clearly intended that the vendor should retain a charge on the property and not that he should part with the property completely, looking solely to the personal liability of the purchaser to pay the consideration." *Dansk Røky Criffel Syndikats Aktieselskab v. Snell*, (1908) 2 Ch. 127. N

30. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after

Exemption of innocent infringer from liability for damages.

the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented," or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent:

Provided that nothing in this section shall affect any proceedings for an injunction.

31. In a suit for infringement of a patent, the Court may, on the application of either party, make such order for an inspection, etc., in suit. injunction¹, inspection² or account³, and impose such terms and give such directions respecting the same and the proceedings thereon, as the Court may see fit.

(Notes).

1.—“*Injunction.*”

(1) General principles.

- (a) Consideration of the principles and practice of the Court in granting injunctions in patent cases upon interlocutory motions and at the hearing. *Bacon v. Jones*, 4 Myl. & C. 493. O
- (b) When a patentee can show that he has possession of a patent privilege, under colour of a title, not evidenced merely by his patent, but also supported by long and undisputed enjoyment, and can also show that the defendant against whom he is proceeding has violated the privilege, he shall have immediate relief, and the protection of an interlocutory injunction. *Hindmarck's Law of Patents*. P
- (c) The injunction which a plaintiff obtains by decree, is not merely temporary, or until further orders, but extends to the whole duration of the patent privilege; and not only applies to the particular mode of infringement proved against the defendant, but to all other modes in which the patent privilege may be violated. (*Ibid*). Q

(2) *Interim injunction*—When granted.

- (a) In a suit to restrain the infringement of a patent relating to roller skates, the plaintiff moved for an injunction against the defendant until the hearing:—*Held*, that the plaintiff was entitled to an injunction upon giving an undertaking as to damages. Inasmuch as the defendant's trade was only a new one, there would be less hardship in stopping it and requiring the plaintiff to give an undertaking as to damages than in compelling the plaintiff to rely upon the defendant's undertaking to keep an account of his sales and profits. *Plimpton v. Spiller*, 4 Ch. D. 286; 35 L.T. 656; 25 W.R. 152. R
- (b) It depends upon the degree of doubt which exists as to the question of validity and infringement whether the Court will grant an *interim* injunction. The degree of convenience and inconvenience by granting an injunction will always be carefully considered. *Birdson v. Mc Alpine*, 8 Beav. 229. S
- (c) The Court will interfere by interlocutory injunction in support of a patent right, where the patent is an old one and there has been long and undisturbed enjoyment of it, or where its validity has been established elsewhere, and the Court sees no reason to doubt the result, or where the conduct of the defendant has been such that as against him there is no reason to doubt the validity of the patent. *Dudgeon v. Thomson*, 30 L.T. 244; 22 W.R. 464. And see *Dudgeon v. Thomson*, 3 App. Cas. 34. T
- (d) Where there has been a length of exclusive enjoyment under a patent, the Court will grant an injunction in the first instance, without previously putting the party to establish this right by an action at law; otherwise, where the patent is recent. *Hill v. Thomson*, 3 Mer. 622; 17 R.R. 156. U

I.—“*Injunction*”—(Continued).

- (e) Principles upon which the Court will interfere to protect a patentee before he has established his right at law in the case of patents which have been long used or enjoyed, or will in the case of new patents suspend its interference until the right at law has been established. *Caldwell v. Vanvliessen*, 9 Hare 424; 21 L.J., Ch. 97; 16 Jur. 115. **Y**
- (f) Long and exclusive enjoyment, under letters patent, will entitle a party to an injunction until an action can be tried at law. *Curtis v. Outts*, 18 L.J. Ch. 184. **W**
- (g) Where there is a *prima facie* case of an infringement of a patent, the length of time which the patent has been enjoyed by the patentee will influence the Court in granting an injunction against the parties who are alleged so to have infringed his rights. *Davenport v. Richard*, 3 L.T. 508. **X**
- (h) Although it is the ordinary rule of the Court not to grant an injunction, unless either the validity of a patent has been established, or the patent has been undisputed for many years the circumstances of the case may be such as to induce the Court to depart from that rule. *Renard v. Levinstein*, 10 L.T. 94, *Affirmed*, 10 L.T. 177. **Y**

(3) *Ibid.*—When refused.

(i) LONG USE OF PATENT.

- (a) The Court will not, in the first instance, interfere by injunction to restrain the infringement of a patent unless there has been long and uninterrupted enjoyment under it, but will direct an action to be brought to try the legal right. Delay in filing the bill is a ground for refusing the injunction. *Baxter v. Combe*, 1 Ir. Ch. R. 284. (And see *Betts v. Mensies*, 10 H.L. Cas. 117; 3 Jur. (N.S.) 357. **Z**
- (b) If the answer to a bill to prevent the infringement of a patent deny the invention to be new, and also the enjoyment under the letters patent, and state (as is the fact) that the specification is imperfectly set forth in the bill, the Court will dissolve an injunction previously obtained, on affidavit giving the plaintiff liberty to bring an action, although the defendant admits by his answer that he has made machine upon the principle comprised in the letters patent. *Curtis v. Outts*, 8 L.J., Ch. 184; 3 Jur. 84. **A**
- (c) Although a patent is of long standing, yet, if, from the nature of the alleged invention, or the conflicting evidence as to its novelty, its validity appears to be doubtful, or if the evidence of exclusive possession is not satisfactory, the Court will not grant an injunction until the title has been established at law. *Gollard v. Allison*, 4 Myl. and C. 487. **B**
- (d) After the patentee had obtained a verdict in an action brought to try the validity of the patent, the Court refused to grant injunction to restrain the infringement of the patent, on the ground that a rule nisi for a new trial had been obtained and was pending in the Court of law and that the legal title of the patentee was therefore still undecided. (*Ibid.*) **C**

(ii) DELAY, EFFECT OF.

- (a) A special injunction, on notice, to prevent the infringement of a patent, refused on the ground of delay, notwithstanding the Court had a strong impression in favour of the plaintiff's right. An injunction was refused and the plaintiff put to establish his legal rights. *Bridson v. Benecke*, 12 Beav. 1. **D**

1.—“*Injunction*”—(Concluded).

- (b) Where the patent was obtained in 1846, the alleged infringement of it took place in 1847, and the bill was not filed for more than two year afterwards, the injunction was refused. *Baxter v. Combe*, 1 Ir. Ch. R. 284. E

2.—“*Inspection.*”(1) *Inspection.*

Form of order for inspection in patent cases. See *Davenport v. Jepson*, 1 N.R. 307. F

(2) *Ibid.*—of machines sold.

In a suit to establish the validity of a patent, and to restrain infringement, upon an application by the plaintiff for inspection of all the sewing machines of every kind on the defendant's premises, the defendant was ordered to verify the several kinds of sewing machines which he had sold or exposed for sale, and to produce at his solicitor's office of each class for inspection by the plaintiff's solicitor, and two of their scientific witnesses. *Singer Manufacturing Co. v. Wilson*, 5 N.R. 505; 12 L.T. 140; 13 W.R. 560. G

(3) *Ibid.*—Of process carried on under Patent.

The plaintiffs, assignees of a patent for an invention for grinding meal and flour, by their specification claimed the discovery of a new process or product, but not any novelty in machinery. They obtained an order for inspection of the process of the defendants, in pursuance whereof they had taken ninety-three samples. The defendant applied for an order giving them a like liberty to inspect the process of the plaintiffs and to take samples:—*Held*, that both the Court and the defendants would be at a disadvantage if the latter were not in a position at the hearing to describe the process which the plaintiffs actually carried on under their patent, and that therefore the defendants ought to be allowed to have the inspection for which they asked and to take samples. *Germ Milling Co. v. Robinson*, 55 L.J., Ch. 287; 53 L.T. 696; 34 W.R. 194. H

(4) *Grounds of application for order for.*

- (a) The Court will not grant an order for an inspection of a machine, upon an affidavit, that the machine used by the defendant is the same for which the plaintiff has obtained a patent. *Shaw v. Bank of England*, 22 L.J., Ex. 26. I

- (b) In an action for the infringement of a patent for a mode of making veneers or mouldings, the Court refused to order an inspection of the defendant's manufactory and machinery, it being doubtful, on the plaintiff's affidavit, whether his patent was for the kind of veneering or for the process by which it was done, and the defendant positively swearing that he used no machinery in the process. *Meadows v. Kirkman*, 29 L.J., Ex. 205. J

- (c) In an action by an assignee of a patent against the publisher of a newspaper who had bought and used the article, the plaintiff having applied to the Court to compel the defendant to “permit the plaintiff, his manager and witnesses, to inspect the type of the defendant used by him in printing the newspaper and if necessary to take specimens for the purpose of being analysed, in order to produce evidence at the trial of the cause,” the Court refused the application. *Patent Type-founding Co. v. Walter*, 5 H. & N. 192; 29 L.J., Ex. 207; 6 Jur. (N.S.) 103; 1 L.T. 382. K

2.—“*Inspection*”—(Concluded).

(d) But the plaintiff subsequently filed a bill in equity against the defendant, and an order was made for inspection and the delivery of a competent portion of the type for the purposes of analysis. *S.C. Johns*, 727; 8 W.R. 358. L

(e) The Court must be satisfied, that the plaintiff has made out such a case as at the hearing of the cause he will obtain the relief prayed, and that the previous inspection required by him of the defendant was material to such a case, before it will grant inspection of his process by which an alleged infringement of a patent was to be made out. *Piggot v. Anglo American Telegraph Co.*, 19 L.T. 46. M

(f) An order will not be made on the application of a plaintiff in a suit to restrain an alleged infringement of his patent, for inspection of the defendant's works and machinery, unless the Court is satisfied that the inspection is essential to enable the plaintiff to prove his case. *Batley v. Kynoch*, 44 L.J., Ch. 89; L.R. 19 Eq. 90; 23 W.R. 52. N

(5) **Application for Inspection of Machines relied on as anticipating plaintiff's patent.**

In an action for infringement of a patent the Court has power under S. 30 of the Patents, &c. Act, 1883, to order inspection of a machine in the possession of the defendant relied on as evidence of publication of the alleged invention within the realm prior to the date of the plaintiff's patent. *Garrard v. Edge* (53 L.J. Ch. 397) discussed. *Van Berkel v. Booth*, (1906) 1 Ir. R. 383; 23 Rep. Pat. Cas. 573—M.R. O

(6) **Patent—Account of Profits—Disclosure of purchasers—Practice.**

On an order directing the defendants to account for profits in a patent action, the plaintiffs sought to have a discovery of the names of the defendants customers. The defendants opposed the application on the ground that the plaintiffs might make an improper use of the information gathered on discovery; they also contended that although such discovery might be given in actions for damages, (See *Murray v. Clayton*, L.R. 15 Eq. 115, *American Branded Wire Co. v. Thomson & Co.*, (1888) 5 Rep. Pat. Case 375, and *Leather Cloth Co v Hirschfeld*, 1 H & M. 295) it could not be given where the plaintiffs had chosen to take such profits as might be found to have been made by the defendants. P

It was held by the Court of Appeal in reversal of the judgment of Cozens-Hardy, J. that the plaintiffs were entitled to discovery and that the defendants had only to thank themselves if any undesirable consequences flowed from the discovery which was necessitated by their own conduct. [*Powell v. Birmingham Vinegar Brewery Co.*, 14 Rep. Pat. Cas. 1, followed.] *Saccharin Corporation v. Chemicals and Drugs Company*, (1900) 2 Ch. 556, C.A. Q

(7) **Inspection of Books—After verdict.**

The plaintiffs obtained a verdict in an action for the infringement of a patent; a rule to enter the verdict for the defendant was discharged, and the defendant appealed. An order was afterwards made for an account of profits, which was not appealed against, but on the parties appearing before the master for the purpose of taking the account, the defendant refused to produce his books. The Court made absolute, a rule for production and inspection of his books, and for interrogatories, to him, notwithstanding the pendency of the appeal. *Saxby v. Easterbrook*, 41 L.J., Ex. 119; L.R. 7 Ex. 207; 26 L.T. 39; 20 W.R. 751. R

3.—“Account.”

(1) General.

A suit had been instituted by a patentee to restrain the defendants from infringing his patent, and asking for an account of profits made by the defendants by sale or manufacture of the materials which formed the subject of the patent. The validity of the patent, and the fact of infringement by the defendants, had been decided in the plaintiff's favour by the Court without a jury. The plaintiff asked, at bar, for damages, or for an account of the profits of which he had been deprived by reason of such infringement. The Court directed an account of profits made by the defendants by the infringement, and an inquiry what sum ought to be paid by the defendants in respect of the damage sustained by the plaintiff. S.C. 34 L.J. Ch 289. But see *De Vitre v. Betts*, 5 N.R. 165. S

(2) Profits actually made.

The Court will only direct an account to be taken of the profits which have been actually made by the defendants, and not of the loss which the plaintiff has sustained by the infringement. *Elwood v. Christy*, 18 C.B. (N.S) 494; 34 L.J.C.P. 130; 13 W.R. 498. (See *Walter v. Lavater*, 8 C.B. (N.S) 162. T

(3) Profits—Mode of taking account—Form of order.

(a) The plaintiff obtained an injunction restraining defendants from infringing his patent for an improved mechanical appliance for operating on large forgings in steel, and an account of profits was directed. The defendants declined to show by their account what were their profits before using the plaintiff's invention, alleging that their profits made during their use thereof were not wholly attributable thereto:—*Held* that the account must show what was the cost of the defendant's forgings both previously to and during the use of the plaintiff's invention. *Siddell v. Vickers*, 61 L.T. 239. U

(b) Practical difficulties in working out a decree directing an account of the profits made by the piratical use of an invention to which the plaintiff had an exclusive right. *Crosley v. Derby Gas Light Co*, 3 Myl. & Cr. 428; 3 Jur. 692. Y

(4) Account of profits—Disclosure of names of purchasers of goods.

Where a patentee has succeeded in an action for infringement of his patent and has obtained an order for an account of profits made by the defendant by selling, supplying, or using the articles infringing the patent, he is entitled to disclosure by the defendant of the names and addresses of the customers of the defendant to whom the infringing articles have been sold. *Sacharin Corporation v. Chemicals and Drugs Co.*, 69 L.J. Ch. 820; (1900) 2 Ch. 556; 83 L.T. 206; 49 W.R. 1; 17 Rep. Pat. Cas. 612; 16 T.L.R. 564. W

32. In a suit for infringement of a patent the Court may certify that

Certificate of validity questioned and costs thereon.

the validity of the patent¹, came in question, and if the Court so certifies, then in any subsequent suit² in that Court for infringement of the same patent the plaintiff, on obtaining a final order or judgment in his favour, shall, unless the Court trying the suit otherwise directs, have his full costs³, charges and expenses of and incidental to the said suit properly incurred.

(Notes).

1.—“The Court may certify....patent.”

(1) Certificate when given.

(a) To an action for the infringement of a patent, there was a plea denying the novelty of the invention :—*Held*, at the trial that the validity of the patent might be considered as having come in question under this plea, so as to entitle the plaintiff to a certificate to that effect. *Gillett v. Wilby*, 9 Car. & P. 384. See *Gilbert v. Green*, 7 M. & W. 347; 9 D.P. C. 219; 10 L.J. Ex. 124. X

(b) If the defendant at the trial consents to a verdict for the plaintiff without any evidence being given, the Judge will not certify that the validity of the patent came in question before him. *Stocker v. Rodgers*, 1 Car. & K. 99. Y

(2) Certificate that validity of patent had come in question.

Where the Court holds that a patent is invalid it will refuse to certify that the validity of the patent came in question. [*Haslam Co. v. Hall* (5 Rep. Pat. Cas. 1, 27), *not followed on this point.*] *Acetylene Illuminating Co. v. United Alkali Co.*, 71 L.J. Ch. 301; (1902) 1 Ch. 494; 50 W.R. 361; 19 Rep. Pat. Cas. 213—*Buckley, J.* Z

2.—“Subsequent suit.”

Validity of patent questioned in previous action—Certificate—Solicitor and client—Costs.

An action commenced but not determined at the time a certificate in another action is obtained is not a “subsequent action for infringement” and the plaintiff cannot claim solicitor-and-client costs on the production of the certificate of the first determined action. *Automatic Weighing Machine Co. v. Combined Weighing Machine Co.*, 6 Rep. Pat. Cas. 475 *followed*. *Saccharin Corporation v. Anglo Continental*, 1 Ch. 414; 48 W.R. 444; 17 Rep. Pat. Cas. 307—*Buckley, J.* A

3.—“Costs.”

(1) Validity of patents established in previous actions.

An action was brought for an alleged infringement of two patents, claiming an injunction and damages. The defendant did not dispute the validity of the patents, but denied the infringement. The defendant, however, paid a sum of money into Court in the alternative. At the hearing the defendant did not oppose the claim for an injunction, and the usual inquiry as to damages was directed to be made. The plaintiffs proved the certificate as to the validity of the patents having been questioned in previous actions and asked for costs as between solicitor and client. The defendant applied to the judge to certify that the plaintiffs ought not to have costs as between solicitor and client, on the ground that the validity of the plaintiffs' patent had not been disputed and their claim to relief not seriously contested by the defendants. *Held*, that the plaintiffs were entitled to costs of the action as between solicitor and client, those of the reference as to damages being reserved; and that the fact that the defendant had not disputed the validity of the patent, and had by paying money into Court so far admitted his

3.—“Costs” —(Concluded).

liability afforded no ground for granting him a certificate depriving the plaintiffs of costs as between solicitor and client. *United Telephone Co. v. Patterson*, 60 L.T. 315. B

(2) Certificate that particulars of objections are reasonable —Costs.

On an application by a defendant for a certificate that the particulars of objections delivered by him are reasonable and proper, the Court will distinguish between what are objections to the validity of the patent and what are merely matters of evidence, and will not allow the costs of the latter. *Acetylene Illuminating Co. v. United Alkali Co.*, 71 L.J. Ch. 301. C

33. A Court making a decree in a suit under section 29 or an order on a petition under section 26 shall send a copy of the decree or order, as the case may be, to the Controller, who shall cause an entry thereof and reference thereto to be made in the register of patents.

34. A High Court to which a petition has been presented under section 26 may stay proceedings on, or dismiss, the petition if in its opinion the petition would be disposed of more justly or conveniently by another High Court.

35. (1) In a suit or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall on the request of either of the parties to the proceedings, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance.

(2) A Court exercising appellate jurisdiction in respect of such suit or proceeding may, if it thinks fit, call in the aid of an assessor as aforesaid.

(3) The remuneration, if any, to be paid to an assessor under this section shall in every case be determined by the Court and be paid by it as part of the expenses of the execution of this Act.

36. Where any person claiming to be the patentee of an invention, by circulars, advertisements or otherwise threatens ² any other person with any legal proceedings or liability ³ in respect of any alleged infringement of the patent, any person aggrieved ⁴ thereby may bring a suit against him in a District Court having jurisdiction to try the suit, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats :

Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes a suit for infringement of his patent ⁵.

(Notes).

1.—“Remedy in case of groundless threats of legal proceedings.”

(1) Restraining threats generally.

(a) There is no presumption in law in favour of the validity of a patent, and therefore a patentee is not entitled to publish statements of his intention to institute legal proceedings, in order to deter persons from purchasing alleged infringements of his patent, if he has no *bona fide* intention to follow up his threats by taking such proceedings, and the Court, will, in such case, restrain him from making such publication. *Rollins v. Hinks*, 41 L.J. Ch. 358; L.R. 13 Eq. 355; 26 L.T. 56; 20 W.R. 287. D

(b) A person alleging the invalidity of a patent is not bound to assert his claim by *scire facias*, in order to establish his right to restrain the publication of statements by the patentee, threatening with legal proceedings persons buying articles of his manufacture alleged to be infringements of the patent. (*Ibid*). E

(c) The plaintiffs claimed damages and an injunction against the defendant, who was a patentee, and who was alleged in the statement of claim to have systematically threatened persons proposing to deal with the plaintiff with legal proceedings for an injunction, and in certain specified instances to have warned the plaintiff or his customers against infringing his patent. The statement of claim did not allege that the threats and warnings were given otherwise than *bona fide*, or that the defendant intended to continue his course of action. The defendant had not taken any legal proceedings.—*Held*, that as there was no allegation of want of *bona fides*, the plaintiff could not be entitled to damages, and that as there was no allegation that the defendant intended to continue his threats, the plaintiff could not go into evidence in support of his claim for an injunction, and he was therefore non-suited. *Halsey v. Brotherhood*, 49 L.J. Ch. 786; 15 Ch. D. 514; 43 L.T. 366; 29 W.R. 9; *Affirmed*, 51 L.J. Ch. 233; 19 Ch. D. 386; 45 L.T. 640; 30 W.R. 279. F

(d) There is no law compelling a man to assert his legal right by action, and this applies to patentees who give notice of infringement. (*Ibid*). G

(e) In many cases it is a man's duty to give notice to persons that they are infringing his legal rights before he brings an action. (*Ibid*). H

(f) The Court will restrain a patentee from issuing circulars threatening legal proceedings against infringers, unless he will undertake to commence proceedings to assert the validity of his patent; and the fact that the party seeking the aid of the Court was formerly a licensee of the patentee under the patentee, and had himself concurred in issuing similar circulars, does not prevent the Court interfering after the expiration of the license. *Asmann v. Lund*, 43 L.J. Ch. 655; L.R. 18 Eq. 380; 31 L.T. 119; 22 W.R. 789. I

(g) Where a plaintiff brings an action to restrain a defendant from issuing notices to the plaintiff's customers that the plaintiff in selling goods is infringing the defendant's patent rights, it is for the plaintiff to prove that the defendant's statements are false; and if no *mala fides* is proved and no damages could be obtained, the Court will not grant the injunction. If in a judicial proceeding the statements are proved to

1.—“*Remedy in case of groundless threats of legal proceedings*”—(Old.).

be false in fact, an injunction would be granted against continuing them, as that would be acting *mala fide*. *Burnett v. Tak*, 45 L.T. 748. J

- (h) The plaintiffs were the makers of “Rainbow Water Raisers or Elevators”, and they commenced an action for an injunction to restrain the defendants from issuing a circular cautioning the public against the use of such elevators as being direct infringements of certain patents of the defendants. The plaintiffs subsequently gave notice of a motion to restrain the issue of this circular until the trial of the action. The defendants then commenced a cross action, claiming an injunction to restrain the plaintiffs from infringing their patents.—*Held*, that as there was no evidence of *mala fides* on the part of the defendants, they ought not to be restrained from issuing the circular until their action had been disposed of, but they must undertake to prosecute their action without delay. *Household v. Fairburn*, 51 L.T. 498. K

(3) Proof of validity of patent.

- (a) In an action for an injunction to restrain a patentee from issuing threats of legal proceedings, the validity of the patent cannot be tried, the only issue in such an action being infringement or no infringement. So, where the plaintiffs in their statement of claim alleged that the defendants’ patent was invalid, such allegation was ordered to be struck out. *Kurts v. Spence*, 55 L.J. Ch. 919; 33 Ch. D. 579; 55 L.T. 317; 35 W.R. 26. L
- (b) An application moved for an injunction to restrain the publication of advertisements, which alleged that an invention claimed by him was an infringement of patent rights belonging to the advertisers, and which threatened legal proceedings against purchasers from the applicant. The respondents, who were the advertisers, raised a case of alleged infringement by their affidavits, but declined to institute legal proceedings against the applicant in respect of such alleged infringement.—*Held*, that the applicant, as a condition precedent to obtaining the injunction, must show that there had been no infringement on his part; and that, as the respondents had raised a case of alleged infringement by their affidavits in opposition to the motion, the injunction would not be granted even though the respondents declined to take legal proceedings against the applicant. *Barney v. United Telephone Co.*, 28 Ch. D. 394; 52 L.T. 573; 33 W.R. 576. M
- (c) *Semble*, in an action to restrain a patentee from issuing threats, the validity of the defendant’s patent may be called in question. *Kurts v. Spence*, *supra*, *Disapproved*; *Challender v. Royle*, *infra*. N
- (d) In such an action the mere production by the patentee of his letters patent does not prove his “legal right”; he must support their validity. The grant of letters patent to two persons for similar inventions does not decide how far the inventions are identical. A files his provisional specification. B, having at that time made independently a similar discovery, comes the next day with his provisional specification. Subsequently B obtains letters patent. Afterwards A applies for letters patent. A can obtain letters patent only so far as not to cover B’s invention. In case of two grants to different persons for the same

1.—“Remedy in case of groundless threats of legal proceedings”—(Cld.).

invention, the Court is not bound by the dates of the patents, or by the fact that the rival patentees had contested their claims to priority of grant before the law officers of the crown. *Kurts v. Spence*, 53 L.T. 488. O

(3) Action to restrain threats of legal proceedings—Validity of patent—Burden of proof.

Where the plaintiff in an action to restrain threats of legal proceedings by any person claiming to be the patentee of an invention, seeks to establish that the patentee is not entitled to the benefit of the proviso to that section, so as to exclude the operation of the former part thereof, the burden is on the plaintiff to prove affirmatively that an action commenced and presented by the patentee for infringement of his patent is not one in which the validity of the patent could beyond all doubt be tried. *Craig v. Dowding*, 98 L.T. 231; 24 T.L.R. 248; 25 Rep. Pat. Cas. 259. P

(4) Objections to patent—Particulars of objection.

The plaintiffs brought an action to restrain the defendants, who were holders of various patents for electric accumulators, from threatening the plaintiffs' customers with legal proceedings for infringement, and by their statement of claim alleged that the defendants' patents were invalid. No specific statement has been made by the defendants which patents they alleged to be infringed. The defendants, who had not delivered a defence, applied for particulars of objections, and the plaintiffs were ordered to deliver particulars of objections within a limited time after the defendants had given to the plaintiffs a list of the patents on which the defendants intended to rely. The defendants appealed, asking for an unconditional order on the plaintiffs to deliver objections: *Held*, that the order under appeal was right, but that the defendants ought also to state that they relied on no other patents than those in the list, and that the plaintiffs ought to undertake when the list had been delivered to amend their statement of claim so as to define the patents the validity of which they disputed. *Union Electrical Power Light Co. v. Electrical Storage Co.*, 38 Ch. D. 825; 59 L.T. 427; 36 W.R. 913. Q

(5) Balance of convenience and inconvenience.

(a) In order to obtain an interlocutory injunction the plaintiff must make out a *prima facie* case, i.e., a case such that if the evidence remains the same at the hearing it is probable that he will obtain a decree, and unless he makes out such a case an injunction will not be granted on the mere consideration of the balance of convenience and inconvenience. *Challender v. Royle*, *supra*. R

(b) In a motion by a plaintiff for an interim injunction to restrain the defendant from issuing threats of legal proceedings for an alleged infringement of the defendant's patent, it is not necessary for the plaintiff to prove that he had not infringed the defendant's patent, but the question is one of the balance of convenience and inconvenience and the Court will decide according to his opinion whether more harm will be done by granting or refusing an injunction. *Walker v. Clarke*, 56 L.J. Ch. 299; 56 L.T. 111; 35 W.R. 245. S

2.—“By circulars, advertisements or otherwise threatens.”

(1) Threats of action.

- (a) If a person claiming to be the patentee of an invention, by circular, advertisements, or otherwise threatens any other person with legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved may obtain an injunction against the continuance of such threats, and may recover damages, if the alleged infringement is not, in fact, an infringement, unless the person making such threats with due diligence commences and prosecutes an action for infringement of his patent. Patents and Designs Act, 1907 (7 Edn. W. 7 C. 29), S. 36. See *Household and Rosher v. Fairburn and Hall* (1885), 2 R.P.C. 140; *Driffield and East Riding Pure Linseed Cake Co. v. Waterloo Mills Cake and Warehousing Co.*, (1886), 31 Ch. D. 638; and title Patents. T

- (b) As to what constitutes a breach of an injunction restraining threats of legal proceedings or liability, see *Ellam v. Martyn & Co.*, (1898), 68 L.J. (Ch) 123, C.A. U

(2) Threats by circulars, advertisements or otherwise—Private letter.

Threats “by circulars, advertisements, or otherwise” include threats by private letter to the person charged with infringement the words “or otherwise” not being restricted, on the *ejusdem generis* principle, to “other means such as circulars or advertisements”. The solicitors to the defendants, a company, sent a letter to the plaintiffs, another company, alleging an infringement of patents claimed by the defendants, and stating that unless the plaintiffs forthwith discontinued the infringement, legal proceedings would be taken. The defendants not having followed up the letter by legal proceedings, the plaintiffs brought an action for an injunction, to restrain them from making or continuing threats of legal proceedings. The defendants delivered a defence alleging that the plaintiffs had infringed the patents, but afterwards, by amendment, struck out the allegation: *Held* that the plaintiffs were entitled to a perpetual injunction, with costs. *Driffield Linseed Cake Co. v. Waterloo Mills Co.*, 55 L.J. Ch. 391; 31 Ch. D. 638; 54 L.T. 210; 34 W.R. 360. Y

(3) Threats contained in letters in answer to inquiries—Privileged communications.

A “threat” within the meaning of this section may be contained in letters written *bona fide* in answer to inquiries made about a patent. Such a letter cannot be considered as a privileged communication. The words “or otherwise” in the section are not to be classed as *ejusdem generis* with “circulars or advertisements”; they are extended by the words which precede them, and not confined by them. *Driffield and East Riding Linseed Cake Co v. Waterloo Mills; Combined Weighing Machine Co.*, and *Barrett v. Day*, all *supra*, approved; *Skinner v. Shew*, 62 L.J., Ch. 196; (1893) 1 Ch. 413; 2 R. 179; 67 L.T. 696; 41 W.R. 217—C.A. W

(4) Threats, what, are—“Without prejudice.”

Although a threat, to come within this section must not be merely a warning about something that is going to be done, it need not be limited to what has passed. There must be, at the time the threat is made, something in respect of which an action could be brought by the

2.—“By circulars, advertisements or otherwise threatens” —(Concluded).

person threatening. A letter written “without prejudice” alleging infringement is continued, is a threat within the act. Or, if the parties arrange a meeting “without prejudice,” and similar words are spoken, this also is such a threat. *Kurtz v. Spence*, 57 L.J. Ch. 298; 58 L.T. 438. Y

(5) Letter—No reference to patents.

A letter may constitute a threat of legal proceedings under this section although it does not in terms refer to any patent or state that patent rights have been infringed. *Doughlass v. Pintsch's Patent Lighting Co.*, 65 L.J. Ch. 919; (1897) 1 Ch. 176; 75 L.T. 332; 45 W.R. 108.

3.—“Legal proceedings or liability.”

Injunction to restrain threats—Threats of proceedings by persons other than person enjoined—Breach of injunction.

An order restraining the defendant, his servants and agents, from threatening the plaintiffs or any of their customers with “any legal proceedings or liability” in respect of the manufacture, sale, or purchase of a certain patented article, is not disobeyed by the circulation by the defendant of a pamphlet with his name thereon as agent for a third person, containing a notice signed by the third person, and stating that he was the exclusive maker of the article, and it was his intention to prosecute all infringers of his patents (*dissentiente Chitty, L.J.*). *Ellam v. Martyn*, 68 L.J. Ch. 128; 79 L.T. 510; 47 W.R. 212; 16 Rep. Pat. Cas. 28; 15 T.L.R. 107. Z

Held, by *Chitty, L.J.*, agreeing with *Romer, J.*, that the injunction was not restricted to threats of proceedings to be taken by the defendant himself, and, that the circulation of the pamphlet in question was a breach of the injunction. (*Ibid*).

4.—“Person aggrieved.”

Circulars issued in general terms—“Person aggrieved.”

A patentee brought an action against a second manufacturer for passing off his goods as those of the plaintiff. He also issued, in the boxes containing his own goods, the following circular:—“Notice to grocers and others—Information of extensive violation of Mr. Wm. Edge's patent rights has been received. All parties are warned not to infringe these rights—R & R.C. Winder, Solicitors, Bowker's Row, Bolton England.” A third manufacturer, commencing to sell similar goods and finding that some of his customers had received the circular, brought an action to restrain the patentee from issuing threats and for damages: *Held*, that the circular did not refer to future infringements only, and that it was issued under such circumstances that persons who received it must have considered that it applied to the second and third manufacturers; that it was therefore not a general warning such as a patentee might be justified in issuing, but was a threat, and that the third manufacturer was a person aggrieved and entitled to bring the action. *Challender v. Royle*, 66 L.J. Ch. 995, explained—*Per Lindley, L.J.* This section applies to threats by the owner of an invalid patent. *Johnson v. Edge*, 61 L.J. Ch. 262; (1892) 2 Ch. 1; 66 L.T. 44; 40 W.R. 437. A-B

5.—“ Provided....with due diligence....patent.”

(1) “ Due diligence.”

C, a patentee, brought an action against R, a prior patentee of a similar invention, to restrain R from issuing threats of legal proceedings against persons selling C's patent article. Shortly after C had sued out his writ, but before it had been served, R had commenced an action for infringement against the P. Co., who were selling C's articles. *Held*, that the action mentioned in the proviso as taking a case out of the section need not be an action against the person who is suing to restrain the threats, but that an action for infringement honestly brought with reasonable diligence against any of the persons who have been threatened, will, if duly prosecuted, satisfy the proviso. That in considering whether such an action is brought with due diligence, the time of issuing the threats, and not the time when the party bringing the action first knew of the acts which he alleges to be infringements, is the period to be looked to. *Challender v. Royle*, 56 L.J. Ch. 995; 36 Ch. D. 425; 57 L.T. 734; 36 W.R. 357. C

(2) Prosecuting action with due diligence.

On 19th April, 1904, the plaintiffs issued their writ for an injunction to restrain an alleged infringement by the defendants of their letters patent for improvements in golf balls by selling balls known as Springvale Eagle and Springvale Hawk. On 8th June, 1904, the plaintiffs inserted in a golfing paper a statement that it had come to their notice that golf balls known as the Springvale Eagle and Springvale Hawk were being offered for sale “in infringement of letters patent belonging to the Haskell Co.”; that actions had been commenced to restrain such infringement; and that the plaintiffs would enforce their rights against all persons buying or selling or otherwise dealing in or using such infringing balls. The plaintiffs were also alleged to have issued circulars to dealers in golf balls. On 20th May the plaintiffs delivered their statement of claim. On 13th June the defendant (who had not yet put in their defence) served notice of motion to restrain the plaintiffs until the trial of the action from representing by advertisement or otherwise that the golf balls made and sold by the defendants as Springvale Eagle and Springvale Hawk were infringements of any patent belonging to the plaintiffs: *Held*, dismissing the motion, that it could not be said that the plaintiffs had not “with due diligence” commenced and prosecuted their action; and secondly, that the advertisements and circulars were not a contempt of Court. *Haskell Golf Ball Co. v. Hutchinson*, 21 Rep. Pat. Cas. 497; 20 T.L.R. 603—D
Buckley, J.

(3) Right of action—Costs.

The remedy of the threatened party is gone so soon as an action is, within a reasonable time, commenced by the patentee to restrain the alleged infringement which is the subject of the threats; but the patentee if he does not commence his proceedings in the form of a counterclaim to the action to restrain the threats, but institutes a separate action should endeavour to obtain a stay of the first action, and in default of so doing may be deprived of his costs thereof. *Compound Weighing and Advertising Co. v. Automatic Weighing Machine Co.*, 58 L.J. Ch. 709. E

5.—“Provided....with due diligence....patent” —(Concluded).

(4) Where action for infringement commenced.

An action to restrain threats in respect of an alleged infringement of a patent ought not, having regard to the section to be commenced after an action to restrain the alleged infringement has been instituted and is being prosecuted with due diligence; and if it is so commenced, all proceedings in it may be stayed as being vexatious. *Barrett v. Day*, 59 L.J. Ch. 464; 43 Ch. D. 435; 62 L.T. 597; 38 W.R. 362. **F**

Miscellaneous.

37. Where, after the commencement of this Act, a patent is granted to two or more persons jointly¹, “they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as joint tenants, but, subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a license without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his legal representatives.”

(Notes).

1.—“A patent is granted to two or more persons jointly.”

Grant of patent to two or more persons jointly—Effect.

(a) When letters patent are granted to two or more persons, any one of them may use the invention for his own benefit without the consent of the others. *Mathers v. Green*, 35 L.J. Ch. 1; L.R. 1 Ch. 29; 11 Jur. (N.S.) 845; 13 L.T. 420; 14 W.R. 17. **G**

(b) Where a patent is vested in trustees upon trust for several tenants in common or joint tenants, *quære*, whether any one of them is at liberty to work the patent on his own account. *Hancock v. Bewly*, 1 Johns, 601. **H**

(c) *Seems*, that joint owners of a patent are answerable for losses occasioned by their co-adventurers only to the extent of their respective shares. *Lovell v. Hicks*, 2 Y. & Coll. 481; 6 L.J. Ex. Eq. 85; 5 id. 101. **I**

Novelty of invention.

38. (1) An invention shall be deemed a new invention¹ within the meaning of this Act—

- (a) if it has not, before the date of the application for a patent thereon, been publicly used in any part of British India, or been made publicly known² in any part of British India, and
- (b) if the inventor has not by secret or experimental uses made direct or indirect profits from his invention in excess of such an amount as the Court or the Governor General in Council, as the case may be, may, in consideration of all the circumstances of the case, deem reasonable.

(2) The public use or knowledge of an invention before the date of the application for a patent thereon shall not be deemed a public use or knowledge within the meaning of this Act if the knowledge has been obtained surreptitiously or in fraud of the true and first inventor³ or has been communicated to the public in fraud of such inventor or in breach of confidence :

Provided that such inventor has not acquiesced in the public use of his invention, and that, within six months after the commencement of that use, he applies for a patent.

(Notes).

N.B.—See notes under S. 2, *supra*.

1.—“New invention.”

See cases noted under S. 3 at pp. 14—20, *supra*.

2.—“Publicly used....Publicly known.”

[See cases noted at pp. 20, 21, under S. 3, *supra*.]

(1) Prior publication and user.

(a) A few months before the date of a patent for an improvement in paddle-wheels, two pairs of the wheels were made for a party (to whom the patent was afterwards assigned) by an engineer and his workman at his own manufactory, under the directions of the patentee, and under an injunction of secrecy, the engineer being paid for them by the party; when finished they were taken to pieces, packed up, and shipped for a foreign port, where, according to his directions, they were put together and used (after the date of the patent) in steamboats belonging to a company, of which he was the manager and principal shareholder: *Held*, that this was not such a publication of the invention as to avoid the patent. *Morgan v. Seward*, 2 M. and W. 544; M and H. 55; 6 L.J. Ex. 163; 1 Jur. 527. J

(b) A necessary and an unavoidable disclosure of an invention to others, if made in the course of mere experiments, is not such a publication as will avoid the subsequent grant of a patent, though the same disclosure, if made in the course of a profitable use of an invention previously ascertained to be useful would be a publication; but an experiment performed in the presence of others, which not only turns out to be successful, but actually beneficial in the particular instance, is not necessarily a publication, so as to constitute a gift of the invention to the world. *Newall and Elliot, In re*, 4 C.B. (N.S.) 269; 27 L.J. C.P. 337; 4 Jur. (N.S.) 562. K

(c) B, applied for a patent for improvements in making capsules. Some delay occurred in the office, and between the time of the application for and the issuing of the letters patent, B manufactured a quantity of the articles, in the making of which he had discovered improvements. They were made by his own workmen, and were not intended for sale before the patent was granted, nor were they sold. *Held*, that this did not invalidate the patent. *Beitz v. Menzies* 28 L.J. Q.B. 361; 5 Jur. (N.S.) 1164. L

2.—“Publicly used....Publicly known”—(Concluded).

- (d) If the inventor of a machine lends it to another in order to have its qualities tested, and that person uses it for some weeks in a public work-room; this is not giving the invention such publicity as to deprive the inventor of his right to obtain letters patent for it. *Bentley v. Fleming*, 1 Car. & K. 587. See also, *Hills v. London Gas-light Co.*, 5 H. & N. 312; 29 L.J. Ex. 409. M

(2) Nature of public knowledge.

- (a) Prior knowledge to avoid a patent, must be knowledge equal to that required to be given by a patent; that is, such knowledge as will enable the public to peruse the very discovery, and to carry the invention into practical use. *Hills v. Evans*, 4 De. G.F. & J. 288; 31 L.J. Ch. 457; 8 Jur. (N.S.) 525; 6 L.T. 90. N

- (b) A prior publication, to have that effect, must be one from which a person with ordinary knowledge would be able practically to apply the discovery without further experiment. (*Ibid*). O

- (c) To avoid a patent on the ground of prior publication, it is not enough that the invention has been published; it must have been made public to such an extent that a knowledge of it may be assumed among persons conversant with the subject. *Plimpton v. Spiller*, 47 L.J. Ch. 211; 6 Ch. D. 412; 37 L.T. 56; 26 W.R. 285. P

- (d) The prior publication must contain a description equivalent to a sufficient specification. (*Ibid*). Q

(3) Knowledge of patentee.

- (a) Although a party may believe himself to be the first and original inventor, yet he cannot shelter himself under wilful ignorance, but will be fixed not only with what he knew, but with that which he might have known had he made the inquiries which it was incumbent upon him to make. *Honiball's Patent, In re*, 9 Moore P.C. 378. R

- (b) If an invention becomes (without fraud) known to the public, no subsequent patent can be granted for it. It is not necessary that it should have been used by the public, as well as known to the public. *Patterson v. Gaslight and Coke Co.*, 47 L.J. Ch. 402; 3 App. Cas. 239; 38 L.T. 303; 26 W.R. 482—H.L. (E). S

3.—“True and first inventor.”

N.B.—See cases O and P at p. 14, under S. 2. *supra*.

First and original inventor.

- A** ——— means a person who could claim the merit of the first invention without reference to the user. *Honiball's Patent, In re*, 9 Moore P.C. 378. T

39. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Controller, the Controller may at any time, on payment of the prescribed fee, seal a duplicate thereof.

40. (1) The exhibition of an invention at an industrial or international exhibition, certified as such by the Governor General in Council, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition

Provisions as to exhibitions.

in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention or the validity of any patent granted on the application :

Provided that—

- (a) the exhibitor, before exhibiting the invention, gives the Controller the prescribed notice of his intention to do so ; and
- (b) the application for a patent is made before or within six months from the date of the opening of the exhibition.

(2) The Governor General in Council may, by notification in the *Gazette of India*, apply this section to any exhibition mentioned in the notification in like manner as if it were an industrial or international exhibition certified as such by the Governor General in Council, and any such notification may provide that the exhibitor shall be relieved from the condition of giving notice to the Controller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the notification.

41. The trustees of the Indian Museum may at any time require a Model to be furnished to Indian Museum. a patentee to furnish them with model or sample of his invention on payment to the patentee of the cost of the manufacture of the model or sample, the amount to be settled, in case of dispute, by the Governor General in Council.

42. (1) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any Court in British India, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from British India.

(2) This section shall not extend to vessels of any foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in British vessels while in the ports of that State, or in the waters within the jurisdiction of its Courts.

PART II.

DESIGNS.

Registration of Designs.

43. (1) The Controller may, on the application of any person claiming to be the proprietor² of any new or original design³ not previously published⁴ in British India, register the design under this Part.

Application for registration of designs¹.

(2) The application must be made in the prescribed form and must be left at the Patent Office in the prescribed manner and must be accompanied by the prescribed fee.

(3) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question.

(4) The Controller may, if he thinks fit, refuse to register any design presented to him for registration ; but any person aggrieved by any such refusal may appeal to the Governor General in Council.

(5) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(6) A design when registered shall be registered as of the date of the application for registration.

(Notes).

1.—“ Application for registration of designs.”

(1) Classification of goods.

(a) For the purposes of the registration of designs goods shall be classified in the manner specified in the fourth Schedule to the Indian Patents and Designs Rules, 1912.

(b) If any doubt arises as to the class to which any particular description of goods belongs, it shall be determined by the Controller. [Rule 26, Indian Patents and Designs Rules, 1912.] **U**

(2) Application to register a design.

(a) An application under S. 43 of the Act for the registration of a design shall be made on Form 14, (See 2nd Schedule to the above Rules) and shall be accompanied by four copies of the design and shall be dated and signed by the applicant or his agent.

(b) The application shall state the class in which the design is to be registered, and the article or articles to which the design is to be applied. Where it is desired to register the same design in more than one class, a separate application shall be made in each class.

(c) If so required by the Controller, the applicant shall state the purpose for which the article is used and the material or predominating material of which the article is made, and shall give a brief statement of the novelty claimed for the design. [Rule 28 *Ibid.*] **Y**

(3) Copies and specimens of designs.

1. The four copies of the design which in accordance with rule 28, *supra* must accompany the application shall be exactly similar drawings, photographs, tracings, or other representations of the design, or shall be specimens of the design.

2. Each representation shall show the complete design and shall be on paper, or mounted on paper, of a size of 13 by 8 inches, and on one side only. Drawings or tracings shall be made in black ink.

3. When the specimens are not in the opinion of the Controller, suitable for record in the office, they shall be replaced by representations.

1.—“Application for registration of designs”—(Concluded).

4. If the Controller in any case so requires, he shall be supplied with one or more representations or specimens of the design in addition to those supplied with the application.

5. Where words, letters, or numerals are not of the essence of the design, they shall be removed from the representations or specimens. [Rule 29, *Ibid.*] W

(4) Acceptance.

Upon receipt of an application for registration, the Controller shall consider it, and if he thinks there is no objection to the design being registered, he may accept it. [Rule 30, *Ibid.*] X

(5) Objections.

If after consideration of the application any objections appear to the Controller, a statement of these objections shall be sent to the applicant or his agent in writing, and unless within one month the applicant or his agent applies for a hearing he shall be deemed to have withdrawn his application. [Rule 31, *Ibid.*] Y

(6) Decision of Controller.

The decision of the Controller at such hearing as aforesaid shall be communicated to the applicant or his agent in writing, and if he objects to such decision, he may within one month, should he consider it necessary for the purpose of appeal, apply upon Form 15 [See Sch. II, Indian Patents and Designs Rules, 1912] requiring the Controller to state in writing the grounds of his decision and the materials used by him in arriving at the same. [Rule 32, *Ibid.*] Z

(7) Date for appeal.

Upon receipt of such form, the Controller shall send to the applicant or his agent such statement as aforesaid in writing, and the date when such statement is sent shall be deemed to be the date of the Controller's decision for the purpose of appeal. [Rule 33, *Ibid.*] A

(8) Non-completion within six months.

An application which, owing to any neglect or default of an applicant, has not been completed so as to enable registration to be effected within six months of the date of application, shall be deemed to be abandoned. [Rule 34, *Ibid.*] B

2.—“Proprietor.”

(1) Proprietor—Definition.

See S. 2, *supra*. C

(2) Application by whom made.

(a) The section of the Patents and Designs Act, which empowers a proprietor of a design to obtain an order for its registration, is this section. 25 A. 493 (496). D

(b) From the words of this section it will be seen that the only person who is entitled to have a design registered under the Act is the proprietor for the time being of the design. (*Ibid.*) E

(c) In this case, as the design had been previously published in India, *vis.*, to the Parsee merchant, the plaintiffs were not the proprietors of the design, and the design was not a new and original design. (*Ibid.*) F

3.—“New and original design.”

(1) New and original design.

- (a) For registration there must be a——. 25 A. 493 (496). G
- (b) The portrait of a well-known public character, copied from a photograph and applied as a design upon earthenware, is not a new and original design within the meaning of the copyright of Designs Act. *Adams v. Clementson*, 12 Ch. D. 714; 27 W.R. 379. H

(2) Perforated picture casting a shadow.

The plaintiff claimed to be the proprietor of a subsisting copyright in a certain “book” with a picture or design entitled “The Christograph,” which was duly registered. The so-called book was an envelope, with the title printed thereon, containing a piece of card-board, perforated in such a way that the shadow cast by it on a wall, or otherwise, roughly imitated a well-known picture. The envelope contained also some descriptive lines, which were not claimed to be original. The plaintiff complained that the defendants were selling a similarly perforated card, accompanied by the same lines, and enclosed in an envelope bearing as a title “The Bibloscope, or Shadowgraph,” whereby the sale of the plaintiff’s article had been diminished. The defendants denied the alleged copyright, and also that the plaintiff was the first inventor of the design: *Held*, that the design was not original, and was not capable of being protected by the statute; that the title only was registered, and was the plaintiff’s property. As, however, that had not been adopted by the defendants, the plaintiff’s case wholly failed. *Cable v. Marks*, 52 L.J. Ch. 107; 47 L.T. 482; 31 W.R. 221. I

(3) Combinations.

- (a) A new combination of old patterns may be a new and an original design, so as to be susceptible of registration under 5 & 6 Vict., c. 100. *Har-rison v. Taylor*, 4 H. & N. 815; 29 L.J. Ex. 3; 5 Jur. (N.S.) 1219. J
- (b) There is little or no analogy between a patent and a design. (*Ibid*). K
- (c) A registered a design for ornamenting woven fabrics. The design was applied to a fabric woven in cells, called “The Honeycomb Pattern,” and it consisted of a combination of the large and small honeycomb, so as to form a large honeycomb stripe on a small honeycomb ground. The large honeycomb was not new, but they had never been used in combination before A registered his design. Other fabrics had been woven with a similar combination of a large and small pattern. *Held*, that the design was a new and an original design (*Ibid*). L
- (d) An article of manufacture to which a new design is applied (whether such design is single or the result of a new combination of old and known designs) is not itself a design within the meaning of the statute, and cannot be protected by registration. (*Ibid*.) See *Holdsworth v. Oream*, post, col. 531. M
- (e) A combination of known things may produce a new and original design. *Reg v. Firmin*, 3 H. & N. 304n; 15 J.P. 570. N

(4) How made.

Four old designs were respectively applied to three ribbons, and to a button; and the three ribbons were then united by the button, so as to form a badge. The badge was registered, *held*, that this union did not amount to a new design within the statute. *Mulloney v. Stevens*, 10 L.T. 190. O

3.—“*New and original design*”—(Concluded).

(5) **Bricks.**

A newly-invented brick, the utility of which consisted in its being so shaped, that when several bricks were laid together in building, a series of pertures were left in the wall, by which the air was admitted to circulate, and a saving in the number of bricks required was effected, is a design capable of being registered. *Rogers v. Driver*, 16 Q.B. 102; 20 L.J. Q.B. 31. P

(6) **Marks.**

Where a plaintiff who had filed a bill to restrain the sale of certain articles of improved furniture, was shown to have sold similar articles without having the word “registered” and the date of registration notified on such articles, his bill was dismissed with costs. (*Ibid.*) Q

(7) **Mode of description—Combination.**

The same nicety is not required in registering patterns or designs as in describing inventions sought to be protected under the patent laws. *Holds-worth v. M'Crea*, 36 L.J. Q.B. 297; L.R. 2 H.L. 380; 16 W.R. 226. R

(8) **Registration with particular thing.**

Semble, that where a man chooses to register his design with a particular thing, he cannot afterwards be heard to say that he claims the design as distinguished from the thing. *Barron v. Lomas*, 28 W.R. 973. S

4.—“*Not previously published.*”

(1) **Design—Nature—Publication.**

(a) The design must be a new and original design. 25 A. 493 (496). T

(b) It must not have been previously published in British India. (*Ibid.*) U

(2) **Sending design to person not in confidential relation to proprietor.**

If a design is communicated to a person who is not in any confidential relation to the author or proprietor of the design, it would seem that such communication would constitute a publication and form a bar of the subsequent registration of the design. (*Ibid.*) V

44. Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it in some one or more other classes shall not be refused, nor shall the registration thereof be invalidated—

- (a) on the ground of the design not being a new and original design, by reason only that it was so previously registered; or
- (b) on the ground of the design having been previously published in British India, by reason only that it has been applied to goods of any class in which it was so previously registered.

Certificate of re-
gistration.

45. (1) The Controller shall grant a certificate of registration to the proprietor of the design when registered.

(2) The Controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

46. (1) There shall be kept at the Patent Office a book called the **Register of Designs**. Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed.

(2) The register of designs existing at the commencement of this Act shall be incorporated with and form part of the register of designs under this Act.

(3) The register of designs shall be *prima facie* evidence of any matters by this Act directed or authorized to be entered therein.

Copyright in Registered Designs.

47. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have **Copyright on registration.** copyright in the design during five years from the date of registration.

(2) If within the prescribed time before the expiration of the said five years application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copyright¹ for a second period of five years from the expiration of the original period of five years.

(3) If within the prescribed time before the expiration of such second period of five years application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller may, subject to any rules under this Act, on payment of the prescribed fee, extend the period of copyright¹ for a third period of five years from the expiration of the second period of five years.

(Note).

1.—“Extend the period of copyright.”

Extension of period of copyright in registered design.

Applications under S. 47, sub-Ss. (2) and (3), of the Act for the extension of the period of copyright in registered designs may be made at any time not more than six months and not less than one month before the time of the expiry of the copyright. The application shall be made on Form 16. [Second Schedule to the Indian Patents and Designs Rules, 1912.] [Rule 35, The Indian Patents and Designs Rules, 1912.] **W**

Requirements before delivery on sale.

48. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

- (a) (if exact representations or specimens were not furnished on the application for registration), furnished to the Controller the prescribed number of exact representations or specimens

of the design; and, if he fails to do so, the Controller may erase his name from the register, and thereupon the copyright in the design shall cease; and

- (b) cause each such article to be marked with the prescribed mark¹ or with the prescribed words or figures, denoting that the design is registered; and, if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the Governor General in Council by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Governor General in Council may, if he thinks fit, by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as he thinks fit.

(Note).

1. — "Cause each such article....mark."

Marking of articles before delivery on sale.

Before delivery on sale of any articles to which a registered design has been applied the proprietor of such design shall cause each such article to be marked with the word REGISTERED or with the abbreviation REGD. or with the abbreviation RD as he may choose, and also (except in the case of articles to which have been applied designs registered in classes 9, 13, 14 and 15) with the number appearing on the certificate of registration. [Rule, 36, The Indian Patents and Designs Rules, 1912.] **X**

49. The disclosure of a design by the proprietor to any other person,

in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

50. (1) During the existence of copyright in a design, or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorized in writing by him, or a person authorized by

¹ Inspection of registered designs.

the Controller or by the Court, and furnishing such information as may enable the Controller to identify the design, and shall not be open to the inspection of any person except in the presence of the Controller, or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof :

Provided that, where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2) After the expiration of the copyright in a design, or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

(Note).

1.—“ Inspection of Registered designs.”

Inspection of designs.

Registered designs shall not, except as provided by this Section, be open to inspection until five years after the date of application for registration.

[Rule 37, The Indian Patents and Designs Rules, 1912.]

Y

51. On the request of any person furnishing such information as may

Information as to
existence of copy-
right¹.

enable the Controller to identify the design, and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor.

(Note).

1.—“ Information as to . . . copyright.”

Request for information.

A request for information under this section may be made on Form 18. (See Sch. II, The Indian Patents and Designs Rules, 1912.) If the number of the registered design is not known, two copies of the design, in respect of which inquiry is made, shall accompany the application.

[Rule 38 of The Indian Patents and Designs Rules, 1912.]

Z

Industrial and International Exhibitions.

52. (1) The exhibition at an industrial or international exhibition

Provisions as to
exhibitions. certified as such by the Governor General in Council, or the exhibition elsewhere during the period of the holding of the exhibition; without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof :

Provided that—

- (a) the exhibitor, before exhibiting the design or article, or publishing a description of the design, gives the Controller the prescribed notice of his intention to do so : and
- (b) the application for registration is made before or within six months from the date of the opening of the exhibition.

(2) The Governor General in Council may, by notification in the *Gazette of India*, apply this section to any exhibition mentioned in the notification in like manner as if it were an industrial or international exhibition certified as such by the Governor General in Council, and any such notification may provide that the exhibitor shall be relieved from the condition of giving notice to the Controller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the notification.

Legal Proceedings.

Piracy of registered design ¹.

53. (1) During the existence of copyright in any design it shall not be lawful for any person —

- (a) for the purpose of sale to apply or cause to be applied to any article in any class of goods in which the design is registered, the design or any fraudulent or obvious imitation ² thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied ; or,
- (b) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section, he shall be liable for every contravention—

- (a) to pay to the registered proprietor of the design a sum not exceeding five hundred rupees recoverable as a contract debt, or
- (b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction ³ against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly :

Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed one thousand rupees.

(3) When the Court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs.

(Notes).

1.—“Piracy of registered design.”

(1) Design—Infringement.

A registered as a design a pattern consisting of a combination of distinct designs. B slightly altered the combination, but not so as to affect the general appearance of the pattern:—*Held*, that this was an infringement of the copyright in the pattern. *M’Crea v. Holdsworth*, L.R. 6 Ch. 418; 28 L.T. 444; 19 W.R. 86. **A**

(2) *Ibid.*—No infringement.

(a) In a suit to prevent the infringement of ‘the plaintiffs’ right to a registered curtain design, the plaintiffs alleged that, after, “suffering great trouble and expense” they invented a particular design of curtain and got it registered, and that the defendants dishonestly imitated that design. The defendants alleged that the design was only an imitation of an old pattern known as the “Italian design” and denied that the plaintiffs were entitled to have that design registered, or to sue for an infringement of it. The evidence of one of the plaintiffs showed that the design was received by them from London in the year 1898, from whom was not stated, but it was in no sense invented by the plaintiffs or either of them. It was in evidence that in the year 1897, a Parsee merchant of Bombay received a design similar to the one in question from his firm in London, with instructions to have curtains made according to that design, and sent to London for sale. He gave instructions to defendants at the end of the year 1899 to print curtains from the design after making certain alterations. The defendants never saw the design which was sent to the plaintiffs, but only copied from the design sent to the Parsee merchant. *Held* that there had been no infringement. 25 A. 493=23 A.W.N. 95. **B**

(b) When a sample of a pattern has been registered the design will not be infringed by an article produced upon the same principle, if different in style. *Thom v. Syddall*, 26 L.T. 15; 20 W.R. 291. **C**

(3) Publication no Waiver.

An inventor of new designs, publishing and selling them in a book, registered under 5 & 6 Vict. c. 100, and containing a notice that persons wishing to manufacture them for the purpose of sale must have the inventor’s permission, does not amount to a license to sell articles to which the designs have been applied. *Pranchardiere v. Elvery*, 4 Ex. 380; 18 L. J. Ex. 881. **D**

(4) Pleading.

A plea that the plaintiff was not before or at the time of registration, the inventor or proprietor of the design mentioned in the declaration to have been registered under 6 & 7 Vict. c. 65, does not put in issue the question whether the design was the subject of a certificate of registration under that Act. *Millengen v. Picken*, 1 C.B. 799; 14 L.J., C. P. 264; 9 Jur. 714. **E**

(5) Defendants’ right to trial at Law—Effect of delay.

(a) In a suit to restrain an alleged infringement of a copyright in a design registered under 5 & 6 Vict. c. 100, the defendant does not lose his right to require the plaintiff to establish his title in an action at law, although he delays doing so until the hearing of the cause, and has previously moved to dissolve upon a ground which cannot be maintained. *Sheriff v. Coates*, 1 Russ. & M. 159. **F**

1.—“Piracy of registered design”.—(Concluded).

- (b) But the defendant ordered to pay the costs of motion to dissolve, that motion being useless, whatever might be the result of the cause. *Norton v. Nicholas*, 4 Kay & J. 475 ; 6 W.R. 764. **G**

2.—“Fraudulent or obvious imitation.”

Fraudulent imitation—What is.

- (a) The plaintiffs registered and sold a design in braid, applied to a boy's jacket. The defendant sold jackets with a design in braid applied to them, which jackets were substantially of the same shape as plaintiffs'. The designer of the defendants' ornamental jackets had previously seen the plaintiffs' article:—*Held*, that the defendants had made a “fraudulent imitation” of the plaintiffs' design within the meaning of this section. *Barron v. Lomas*, 28 W.R. 973. **H**

- (b) A fair imitation of a design is not prohibited by this section but under the words “any such design, or any fraudulent imitation thereof,” there may be a case where, although there are slight variations, the “design” itself has been applied. “Fraudulent imitation” is equivalent to conscious imitation—where, that is, where a man having the design before him, knowingly imitates, and that imitation is not sufficiently original to be protected as a fair imitation. (*Ibid*). **I**

3.—“Injunction.”

Sale and Manufacture.

Under 5 & 6 Vict. c. 100, the designer protected by the Act is entitled to an injunction, restraining not merely the sale but the manufacture of any article to which the design is applied during the period of the protection. *M'Crae v. Holdsworth*, 2 De. G. & S. 496 ; 12 Jur. 820. **J**

54. The provisions of this Act with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee and of references to the design for references to the invention.

Application of certain provisions of the Act as to patents to designs.

(Note).

N.B.—See Ss. 32 and 36, *supra*, and the notes thereunder.

• PART III.

GENERAL.

Patent Office and Proceedings thereat.

55. (1) The Governor General in Council may provide, for the purposes of this Act, an office which shall be called, and is in this Act referred to as, the Patent Office.

(2) The Patent Office shall be under the immediate control of the Controller of Patents and Designs, who shall act under the superintendence and direction of the Governor General in Council.

(3) There shall be a seal for the Patent Office.

(4) Any act or thing directed to be done by or to the Controller may be done by or to any officer authorized by the Governor General in Council.

56. The Governor General in Council may appoint the Controller, and so many officers and clerks, with such designations and duties as he thinks fit.

Officers and clerks.

Fees.

57. (1) There shall be paid in respect of the grant of patents and the registration of designs, and applications therefor, and in respect of other matters with relation to patents and designs under this Act, such fees as may be prescribed by the Governor General in Council, so however that the fees prescribed in respect of the instruments and matters mentioned in the schedule shall not exceed those there specified.

Fees 1.

(2) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid.

(Note).

1. -- "Fees."

See the Schedule *infra*. See also the first schedule to the Indian Patents and Designs Rules, 1912.

K

Provisions as to Registers and other Documents in the Patent Office.

Notice of trust not to be entered in registers.

58. There shall not be entered in any register kept under this Act, or be receivable by the Controller, any notice of any trust, expressed, implied or constructive.

Inspection of, and extracts from, registers.

59. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Privilege of reports of Controller.

60. Reports of or to the Controller made under this Act shall not in any case be published or be open to public inspection.

Prohibition of publication of specification, drawings, etc., where application abandoned, etc.

61. (1) Where an application for a patent has been abandoned or become void, the specifications and drawings (if any), accompanying or left in connection with such application, shall not, save as otherwise expressly provided by this Act, at any time be open to public inspection or be published by the Controller.

(2) Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Controller.

Power for Controller to correct clerical errors.

62. The Controller may, on request in writing accompanied by the prescribed fee,—

- (a) correct any clerical error in or in connection with an application for a patent or in any patent or any specification ;
- (b) cancel the registration of a design either wholly or in respect of any particular goods in connection with which the design is registered ;
- (c) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs.

63. (1) Where a person claims to be entitled by assignment, transmission or other operation of law to a patent, or to the copyright in a registered design, the Controller shall, on request¹ and on proof of title to his satisfaction, register his interest in such patent or design.

Entry of assignments and transmissions in registers.

(2) Where any person claims to be entitled as mortgagee, licensee or otherwise to any interest in a patent or registered design, the Controller shall, on request and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs, as the case may be.

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the patent or design and to give effectual receipts for any consideration for any such assignment, license or dealing :

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other moveable property.

(Note).

1.—“On request.”

Requests under S 63 of the Act.

— to enter a claim to any interest in a patent or registered design shall be made on Form 21, (Sch. II, the Indian Patents and Design Rules 1912) accompanied by the document under which the claim is made, and an attested copy thereof. If, however, the document is a matter of record, an official or certified copy thereof may be produced unless the Controller otherwise directs. (Rule 39, The Indian Patents and Designs Rules, 1912).

64. (1) A High Court may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making, expunging or varying such entry as it may think fit.

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a register.

(3) The prescribed notice of any application under this section shall be given to the Controller, who shall have the right to appear and be heard thereon.

(4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner, who shall upon the receipt of such notice rectify the register accordingly.

(5) A High Court to which an application has been made under this section may stay proceedings on or dismiss the application if in its opinion the application would be disposed of more justly or conveniently by another High Court.

(Note).

1.—“Rectification....Court.”

Rectification of the Register.

Ten clear days' notice of every application to the Court under S. 64 of the Act for rectification of the register shall be given to the Controller. [Rule 40, the Indian Patents and Designs Rules, 1912.] **M**

Powers and Duties of Controller.

65. Subject to any rules in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a Civil Court for the purpose of receiving evidence and administering oaths and enforcing the attendance of witnesses and compelling the production of documents and awarding costs.

Powers of Controller in proceedings under Act.

66. The Controller shall issue periodically a publication of patented inventions containing such information as the Governor General in Council may direct.

67. Where any discretionary power¹ is by or under this Act given to the Controller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of an application or of a specification, or for registration of a design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard,

Exercise of discretionary power by Controller.

(Note).

1.—“Discretionary power.”

Exercise of discretionary power of Controller.

Before exercising any discretionary power given to the Controller by the Act or the Patents and Designs Rules, 1912, adversely to the applicant for a patent, or for amendment of an application or specification, the Controller shall (under S. 67 of the Act) give notice to the applicant or his agent and shall, if so required within one month of the date of such notice, appoint a date for a hearing in the matter and shall give ten days' notice thereof. [Rule 43, The Indian Patents and Designs Rules, 1912.] N

Power of Controller to take directions of Governor General in Council.

68. The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Governor General in Council for directions in the matter.

Refusal to grant patent, etc., in certain cases.

69. The Controller may refuse to grant a patent for an invention, or to register a design, of which the use would in his opinion, be contrary to law or morality.

70. (1) Where an appeal is declared by this Act to lie from the Controller to the Governor General in Council, the appeal shall be made within two months² of the date of the order passed by the Controller, and shall be in writing, and accompanied by the prescribed fee.

(2) In calculating the said period of two months the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(3) The Governor General in Council may, if he thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the Governor General in Council shall be final.

(Notes).

1.—“Appeals to the Governor General in Council.”

Appeals.

(1) An appeal to the Governor General in Council from the decision of the Controller shall be made on Form 24 and shall be left at the Office in duplicate and shall show fully the reasons for appealing and the grounds on which objection is taken to the decision. O

(2) The Controller shall forward one copy to the Governor General in Council through the Secretary in the Department of Commerce and Industry, who shall notify the appellant of its receipt. [Rule 41, The Indian Patents and Designs Rules, 1912.] P

2.—“Two months.”

Time for appeal reduced.

In order that an inventor may not be unduly kept in suspense in case of opposition the time for appeal was reduced from 3 to 2 months. (See the Report of the Select Committee). Q

71. A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorized by this Act, or any rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Certificate of Controller to be evidence.

72. Copies of all specifications, drawings and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted as soon as may be, after they have been accepted or allowed at the Patent Office, to the Governor of Fort St. George in Council, the Governor of Bombay in Council, the Lieutenant-Governor of Burma and to such other authorities as the Governor General in Council may appoint in this behalf, and shall be open to the inspection of any person at all reasonable times at places to be appointed by those authorities.

Transmission of certified printed copies of specifications, etc.

Applications and notices by post.

73. Any application, notice or other document authorized or required to be left, made or given at the Patent Office or to the Controller, or to any other person under this Act, may be sent by post.

74. (1) If any person is, by reason of infancy, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or, if there be none, any person appointed by any Court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

Declaration by infant, lunatic, etc.

(2) An appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

Agency.

Subscription and verification of certain documents.

75. The following documents, namely,—

(1) applications for a patent,

- (2) notices of opposition,
- (3) applications for extension of term of a patent,
- (4) applications for the restoration of lapsed patents,
- (5) applications for leave to amend,
- (6) applications for compulsory license or revocation, and
- (7) notices of surrenders of patent,

shall be signed and verified, in the manner prescribed ¹, by the person making such applications or giving such notices :

Provided that, if such person is absent from British India, they may be signed and verified on his behalf by an agent resident in British India authorized by him in writing in that behalf.

(Note).

1.—“ Signed and verified in the manner prescribed.”

Signature and verification of documents specified in S. 75 of the Act.

The documents specified in S. 75 of the Act shall be dated and signed at the foot, and shall contain a statement that the facts and matters stated therein are true to the best of the knowledge, information and belief of the person signing them. [Rule 8, The Indian Patents and Designs Rules, 1912.] R

76. (1) All other applications and communications to the Controller under this Act may be signed by, and all attendances upon the Controller may be made by or through a legal practitioner ² or by or through an agent authorized to the satisfaction of the Controller.

(2) The Controller may, if he sees fit, require—

- (a) any such agent to be resident in British India ;
- (b) any person not residing in British India to employ an agent residing in British India ;
- (c) the personal signature or presence of any applicant, opponent or other person.

(Notes).

1.—“ Agency.”

Agency.

(1) For all matters falling under the provisions of S. 76 of the Act, any person may, unless otherwise directed by the Controller, authorise, under his personal signature, any other person to act as his Agent and to receive all notices, requisitions and communications. The authority may be given on Form 26 [Sch. II, Patents and Designs Rules, 1912]. S

(2) If he does not desire to authorise any other person to act as his Agent, but wishes notices, requisitions and communications to be sent to a particular address, he may notify the same to the Controller on Form 27. [Sch. II, *Ibid.* Rule 9, The Indian Patents and Designs Rules, 1912.] T

2.—“Legal Practitioner.”

Addition of the words “legal practitioner”—Effect.

The addition of the words ‘legal practitioners’ in S. 76 enables barristers and pleaders to appear before the Comptroller. [See the Report of the Select Committee.] U

Power for Governor General in Council to make rules 1.

77. (1) The Governor General in Council may make such rules as he thinks expedient, subject to the provisions of this Act—

- (a) for regulating the practice of registration under this Act;
- (b) for classifying goods for the purposes of designs;
- (c) for making or requiring duplicates of specifications, drawings and other documents;
- (d) for securing and regulating the publishing and selling of copies, at such prices and in such manner as the Governor General in Council thinks fit, of specifications, drawings and other documents;
- (e) for securing and regulating the making, printing, publishing, and selling, of indexes to, and abridgments of, specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents;
- (f) generally for regulating the business of the Patent Office, the conduct of proceedings before the Controller, and all things by this Act placed under the direction or control of the Controller or of the Governor General in Council; and
- (g) generally for the purpose of carrying into effect the provisions of this Act.

(2) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication.

(3) All rules made under this section shall be published in the *Gazette of India*, and on such publication shall have effect as if enacted in this Act.

(Note).

1.—“Power....rules.”

The Indian Patents and Designs Rules, 1912.

For——see Appendix, *infra*.

V

Offences.

78. If any person uses on his place of business, or on any document issued by him, or otherwise, the words “Patent Office,” or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be punishable with fine which may extend to two hundreded rupees, and, in the case of a continuing offence,

Wrongful use of words “Patent Office.”

with further fine of twenty rupees, for each day on which the offence is continued after conviction therefor.

Savings and Repeal.

79. Nothing in this Act shall take away, abridge or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

V of 1888.

Repeal.

80. The Inventions and Designs Act, 1888, is hereby repealed :

Provided that this repeal shall not affect any application under the said Act pending at the commencement of this Act, and all proceedings on such application shall be continued as if this Act had not been passed.

V of 1888.

Substitution of patents for rights under repealed Act.

81. (1) At any time within two years from the commencement of this Act, any person possessing an exclusive privilege under the Inventions and Designs Act, 1888, may, by request in writing left at the Patent Office and on payment of the prescribed fee, seek leave to convert his exclusive privilege under the said Act into a patent ¹ under this Act.

(2) Notice of any application under this section shall be sent to all persons appearing from the address book kept under the said Act to have any shares or interests in the exclusive privilege.

(3) Save as aforesaid, the procedure prescribed by section 17 in the case of applications under that section shall, so far as may be, apply to every application under this section.

(4) Every patent granted under this section shall be dated as of the date of the exclusive privilege for which it is substituted.

(Notes).

1.—“Convert his exclusive privilege... patent.”

Conversion of a exclusive privilege into a patent.

(1) A request under S. 81 of the Act for the conversion of an exclusive privilege into a patent shall be made on Form 25, [Sch. II of the Indian Patent and Designs Rules, 1912.] and shall be accompanied by the order under which the exclusive privilege was acquired. **W**

(2) The Controller shall advertise the request in the Gazette of India. **X**

(3) Notice of opposition to the conversion may be given on Form B within three months of the date of the first advertisement, and the procedure for the disposal of such opposition shall be regulated by the provisions of Rules 14, 15 and 16 of the Indian Patents and Designs Rules, 1912. [Rule 42, The Indian Patents and Designs Rules, 1912.] **Y**

THE SCHEDULE.

(See Section 57.)

FEES.

	RS.
On application for a patent ...	10
Before sealing a patent ...	30
Before the expiration of the 4th year from the date of the patent ...	50
Before the expiration of the 5th year from the date of the patent ...	50
Before the expiration of the 6th year from the date of the patent ...	50
Before the expiration of the 7th year from the date of the patent ...	50
Before the expiration of the 8th year from the date of the patent ...	50
Before the expiration of the 9th year from the date of the patent ...	100
Before the expiration of the 10th year from the date of the patent ...	100
Before the expiration of the 11th year from the date of the patent ...	100
Before the expiration of the 12th year from the date of the patent ...	100
Before the expiration of the 13th year from the date of the patent ...	100
* Provided that the fees for two or more years may be paid in advance.	
On application to extend term of a patent ...	50
Before the expiration of each year of the extended term of a patent or of a new patent granted under section 15 ...	100
On application for registration of a design ...	3

APPENDIX.

No. 1959-P.—In exercise of the powers conferred by sections 57 and 77 (1) of the Indian Patents and Designs Act, 1911 (II of 1911), the Governor General in Council is pleased to make the following rules.

Indian Patents and Designs Rules, 1912.

CHAPTER I.

Preliminary.

Short title and commencement. 1. These rules may be called the Indian Patents and Designs Rules, 1912.

They shall come into force on the first day of January, 1912.

Definitions. 2. In the rules, unless there is anything repugnant in the subject or context.

(a) The Act means the Indian Patents and Designs Act, 1911.

(b) Office means the Patent Office provided under section 55 of the Act.

(c) Controller means the Controller of Patents and Designs appointed under section 56 of the Act, and includes any officer appointed to act for him.

3. Any application, notice, or other document, and any fee, authorised or required to be left, made, given or paid at the office, or to the Controller, may be sent by hand or through the post addressed to the Controller of Patents and Designs, 1, Council House Street, Calcutta, and, if so sent, shall be deemed to have been left, made, given or paid on the day of receipt.

Fees. 4. (1) The fees to be paid under the Act shall be those specified in the first Schedule to these rules, hereinafter described as the prescribed fees.

(2) Fees may be paid in cash at the office, or may be sent by money order or postal order payable to the Controller at Calcutta. Cheques not made payable at Calcutta to the Controller, and other cheques on which the full value cannot be collected in cash within the time allowed for payment of the fee, will not be accepted. Stamps will not be received in payment of fees.

Application, etc., to be accompanied by the prescribed fee. 5. All applications, notices, requests, appeals or documents on which a fee is leviable under these rules shall be accompanied by the prescribed fee.

6. The forms set forth in the second schedule to these rules, with such variations as the circumstances of each case require, shall be used for the respective purposes therein mentioned, and if used shall be sufficient.

Forms. . .

Documents.

7. (1) All documents and copies of documents, except drawings, sent to or left at the office or otherwise furnished to the Controller shall be written, . . .
Size, etc., of documents. . . type-written, lithographed, or printed in the English language (unless otherwise directed) in large and legible characters with deep permanent ink upon strong white paper, and on one side only, of a size approximately of 14 inches by 8 inches, leaving a margin of at least one

inch and a half on the left hand part thereof. Signatures thereto must be written in a large and legible hand, and a vernacular signature must be accompanied by a translation in English.

(2) Duplicate documents shall be filed at the Office, if at any time required by the Controller.

(3) Names and addresses of applicants and other persons shall be given in full, together with such other particulars of nationality, caste or calling as are necessary for identification.

8. The documents specified in S. 75 of the Act shall be dated and signed at the foot, and shall contain a statement that the facts and matters stated therein are true to the best of the knowledge, information and belief of the person signing them.

Signature and verification of documents specified in S. 75 of the Act.

9 (1). For all matters falling under the provisions of S. 76 of the Act, any person may, unless otherwise directed by the Controller, authorise, under his personal signature, any other person to act as his agent and to receive all notices, requisitions and communications. The authority may be given on Form 26.

(2) If he does not desire to authorise any other person to act as his Agent, but wishes notices, requisitions and communications to be sent to a particular address, he may notify the same to the Controller on Form 27.

CHAPTER II--PATENTS.

Applications for grant of Patent.

10. (1) An application, under section 3 of the Act, for a patent shall be made on Form 1 or Form 2, and shall be accompanied by a specification, prepared in duplicate in accordance with Form 3.

(2) Applications shall, as far as may be practicable, be numbered and dated in the order of their receipt.

(3) If the true and first inventor, or any other applicant is in the service of the Crown, he shall disclose that fact in the application and shall state the office he holds.

(4) If the true and first inventor does not wish to be a party to the application, the applicant shall produce the original deed of assignment or other document under which he is enabled to apply for a patent, unless the application itself is endorsed by the true and first inventor in the presence of two witnesses with a statement that the said inventor agrees that the application shall be made without his name as an applicant for a patent.

(5) If the application is made by the legal representative of a deceased inventor, the legal representative shall produce for inspection the probate of the will or the letters of administration of the estate of the inventor, or a certified copy of such probate or letters, or such other evidence of his title as the Controller may require.

Specifications.

11. (1) The specification shall commence with the title of the invention and the name of the applicant as in the application. It shall terminate with a clear and succinct statement of the invention claimed, distinct from the body of the specification and shall be signed by the applicant or his agent.

(2) Where the invention is capable of representation by drawings, such drawings shall be prepared in accordance with rule 13 and shall be supplied with, and referred to in detail, in the specification.

(3) Irrelevant or other matter, not necessary, in the opinion of the Controller, for elucidation of the invention, shall be excluded from the title, description, claims and drawings.

12. (1) When the specification, or any drawing accompanying it, is defective and requires amendment, one copy shall be returned to the applicant or his agent and all alterations shall be made thereon as far as possible. Additional matter may be interpolated if necessary by re-writing such pages as are required to form a continuous document. Amendments shall not be made by slips pasted on, or as footnotes, or by writing in the margin. The amended documents shall be returned to the Controller together with the cancelled pages or drawings, if any, and with a duplicate of any pages or drawings that have been amended or added.

(2) Amendments, alterations or additions shall be initialled by the applicant or his agent.

(3) No amendments, alterations or additions shall be made in a document returned for amendment beyond those necessary to comply with the requirements of the Controller.

Drawings with applications for patents.

13. (1) Drawings shall be supplied in duplicate on sheets 13 inches in height and either 8 or 16 inches in width. A clear margin of half an inch shall be left round each sheet. The figures of the drawing shall be numbered consecutively Fig. 1, Fig. 2, etc., and shall be placed upright on the sheets. Reference figures and letters shall be clear and bold, not less than $\frac{1}{8}$ of an inch in height, and the same letters shall be used for the same parts in different views or drawings. The sheets of drawings, when more than one, shall be numbered consecutively, the number of each sheet being shown in the right hand top corner. Each sheet shall be signed by the applicant or his agent in the bottom right hand corner.

(2) No written description of the invention shall appear on the sheets of drawings.

(3) At least one copy of the drawings shall be suitable for reproduction and, for that purpose, shall be prepared on tracing cloth or on smooth white paper which is not opaque. All lines and lettering shall be executed with Indian ink of good quality. Coloured lines and washes shall not be used. The lines and lettering shall be firm and even, and section lines shall not be closely drawn. The scale adopted shall be large enough to show the invention clearly.

(4) Drawings shall be delivered flat or rolled so as to be free from creases.

Opposition to grant or Amendment, etc.

Notice of opposition.

14. Notice of opposition to the grant, or to the amendment, etc., of a patent shall be given in duplicate on Form 5. The duplicate notice shall be sent by the Controller to the applicant or his agent.

15. (1) Within 14 days of giving notice of opposition the opponent may, and shall, if at any time so required by the Controller, leave at the Office a full written statement in duplicate of the reasons for, and extent of, his opposition, and of the grounds upon which he relies in support of his opposition.

Filing of statements.

(2) If the written statement referred to in clause (1) is supplied, the Controller shall furnish the applicant or his agent with the duplicate copy thereof, and the applicant or his agent may leave at the office a reply in writing within a time to be specified by the Controller. Such reply shall deal in full with the statement of the opponent and shall be in duplicate.

(3) If the reply referred to in clause (2) is supplied by the applicant, the Controller shall furnish the opponent or his agent with the duplicate copy thereof, and the opponent or his agent may again leave at the office a rejoinder in writing within a time to be specified by the Controller. Such rejoinder shall be confined strictly to matters in reply, and shall be in duplicate. The duplicate copy shall be sent by the Controller to the applicant or his agent.

(4) The Controller may require at any time that any written statement reply or rejoinder shall be in the form of an affidavit.

(5) The time ordinarily allowed for filing a reply or rejoinder shall be one month.

16. (1) On completion of these proceedings, if any, or at such other time as he may see fit, the Controller shall appoint a time for the hearing of the case, and shall give the parties not less than ten days' notice of such appointment. If either party does not desire to be heard, he shall as soon as possible notify the Controller to that effect. If either party desires to be heard, he must leave a notice of his intention to attend the hearing on Form 6, together with a fee of Rs. 10 at the Office. The Controller may refuse to hear any party who has not left such notice and fee at least two clear days before the date fixed for the hearing.

(2) After hearing the party or parties desirous of being heard or if neither party desires to be heard, then without a hearing, the Controller shall decide the case and notify his decision to the parties.

Sealing of patents.

17. (1) If an applicant desires to have a patent sealed on his application, he shall within the period allowed by S. 10, sub-section 2 of the Act, leave at the Office an application on Form 7.

(2) Where the applicant neglects or fails to pay the fee prescribed within the time allowed, the time may be extended for a period not exceeding three months. An application for such extension of time shall be made on Form 4, and shall be accompanied by a fee of Rs. 10, Rs. 20 or Rs. 30 for an extension of one, two, or three months respectively.

18. The patent shall be in the form given in the third schedule to these rules, with such modifications as the circumstances of each case require.

Restoration of a Lapsed Patent.

Restoration of a lapsed patent.

19. (1) Application under S. 16 of the Act for the restoration of a lapsed patent shall be made on Form 9.

(2) If the Controller entertains the application, he shall advertise it in the *Gazette of India*.

20. Notice of opposition to the restoration may be given on Form 5 within six weeks of the advertisement and the procedure for the disposal of such opposition shall be regulated by the provisions of Rules 14, 15 and 16.

Amendment.

21. A request under section 17 of the Act for the amendment of an application, specification or drawings (not being a request under section 62 of the Act for correction of a clerical error) shall be made on Form 10, and shall be accompanied by a copy of the application, specification, or drawings

showing in red ink the proposed amendment in such a manner as to indicate clearly the alteration desired.

22. If the request relates to an application for a patent which has been accepted, the request and the nature of the proposed amendment shall be advertised by notification in the *Gazette of India* and in such other manner, if any, as the Controller may in each case direct under Rule 45. The Controller shall also notify, all persons whose names are entered at the time of the request on the Register as claiming an interest in the Patent.

Procedure when patent has been accepted.

23. Notice of opposition to the amendment may be given on Form 5 within three months of the date of the notification, and the procedure for the disposal of such opposition shall be regulated by the provisions of Rules 14, 15 and 16.

Opposition.

24. Notice of an offer under S. 24 of the Act to surrender a patent, shall be made on Form II. The Controller shall advertise the offer in the *Gazette of India*, and shall notify all persons whose names are entered at the time of the offer on the Register as claiming an interest in the Patent.

Surrender of Patents.

25. Within six weeks of the advertisement any person may give notice of opposition to such surrender. After the expiration of such six weeks the Controller may, if a notice of opposition has been given, appoint a hearing if he sees fit, and shall decide whether the patent shall be revoked.

Opposition.

CHAPTER III—DESIGNS.

26. (1) For the purposes of the registration of designs and of these Rules, goods shall be classified in the manner specified in the fourth Schedule hereto.

Classification of goods.

(2) If any doubt arises as to the class to which any particular description of goods belongs, it shall be determined by the Controller.

27. An address for service in British India shall be given in all applications and other communications to the Controller in connection with designs. Unless such an address is given the Controller need not proceed with the examination of an application, nor send any notice that may be required by the Act or these rules.

Address for service.

Application to register a Design.

28. (1) An application under section 43 of the Act for the registration of a design shall be made on Form 14 and shall be accompanied by four copies of the design and shall be dated and signed by the applicant or his agent.

Application.

(2) The application shall state the class in which the design is to be registered and the article or articles to which the design is to be applied. Where it is desired to register the same design in more than one class, a separate application shall be made in each class.

(3) If so required by the Controller, the applicant shall state the purpose for which the article is used, and the material or predominating material of which the article is made, and shall give a brief statement of the novelty claimed for the design.

29. (1) The four copies of the design which in accordance with rule 28 must accompany the application shall be exactly similar drawings, photographs, tracings, or other representations of the design, or shall be specimens of the design.

Copies and specimens of designs.

(2) Each representation shall show the complete design and shall be on paper, or mounted on paper, of a size of 13 by 8 inches, and on one side only. Drawings or tracings shall be made in black ink.

(3) When the specimens are not, in the opinion of the Controller, suitable for record in the office, they shall be re-placed by representations.

(4) If the Controller in any case so requires, he shall be supplied with one or more representations or specimens of the design in addition to those supplied with the application.

(5) Where words, letters, or numerals are not of the essence of the design, they shall be removed from the representations or specimens.

Procedure on receipt of application.

30. Upon receipt of an application for registration, the Controller shall consider it, and if he thinks there is no objection to the design being registered, he may accept it.

Acceptance.

31. If after consideration of the application any objections appear to the Controller, a statement of these objections shall be sent to the applicant or his agent in writing and unless within one month the applicant or his agent applies for a hearing he shall be deemed to have withdrawn his application.

Objections.

32. The decision of the Controller at such hearing as aforesaid shall be communicated to the applicant or his agent in writing, and if he objects to such decision, he may within one month, should he consider it necessary for the purpose of appeal, apply upon Form 15, requiring the Controller to state in writing the grounds of his decision and the materials used by him in arriving at the same.

Decision of Controller.

33. Upon receipt of such form, the Controller shall send to the applicant or his agent such statement as aforesaid in writing and the date when such statement is sent shall be deemed to be the date of the Controller's decision for the purpose of appeal.

Date for appeal.

34. An application which, owing to any neglect or default of an applicant, has not been completed so as to enable registration to be effected within six months of the date of application, shall be deemed to be abandoned.

Non-completion within six months.

35. Applications under section 47, sub-sections (2) and (3) of the Act for the extension of the period of copyright in registered designs may be made at any time not more than six months and not less than one month before the time of the expiry of the copyright. The application shall be made on Form 16.

Extension of period of copyright in registered design.

36. Before delivery on sale of any articles to which a registered design has been applied the proprietor of such design shall cause each such article to be marked with the word REGISTERED or with the abbreviation REGD. or with the abbreviation RD. as he may choose, and also (except in the case of articles to which have been applied designs registered in classes, 9 13, 14 and 15) with the number appearing on the certificate of registration.

Marking of articles before delivery on sale.

Inspection of designs. 37. Registered designs shall not, except as provided in section 50 of the Act, be open to inspection until five years after the date of application for registration.

Request for information. 38. A request for information under section 51 of the Act may be made on Form 18. If the number of the registered design is not known, two copies of the design, in respect of which inquiry is made, shall accompany the application.

CHAPTER IV—GENERAL.

Registers of Patents and Designs.

Requests under section 63 of the Act. 39. Requests under section 63 of the Act to enter a claim to any interest in a patent or registered design shall be made on Form 21, accompanied by the document under which the claim is made, and an attested copy thereof. If, however, the document is a matter of record, an official or certified copy thereof may be produced unless the Controller otherwise directs.

Rectification of the Register. 40. Ten clear days' notice of every application to the Court under section 64 of the Act for rectification of the register shall be given to the Controller.

Appeals.

- Appeals. 41. (1) An appeal to the Governor General in Council from the decision of the Controller shall be made on Form 21 and shall be left at the Office in duplicate and shall show fully the reasons for appealing and the grounds on which objection is taken to the decision.

(2) The Controller shall forward one copy to the Governor General in Council through the Secretary in the Department of Commerce and Industry, who shall notify the appellant of its receipt.

Conversion of exclusive privilege into a patent.

Conversion of exclusive privilege into a patent. 42. (1) A request under section 81 of the Act for the conversion of an exclusive privilege into a patent shall be made on Form 25, and shall be accompanied by the order under which the exclusive privilege was acquired.

(2) The Controller shall advertise the request in the *Gazette of India*.

(3) Notice of opposition to the conversion may be given on Form 5 within three months of the date of the first advertisement, and the procedure for the disposal of such opposition shall be regulated by the provisions of Rules 14, 15, and 16.

Miscellaneous powers of the Controller.

Exercise of discretionary power of Controller. 43. Before exercising any discretionary power given to the Controller by the Act or these rules adversely to the applicant for a patent, or for amendment of an application or specification, the Controller shall (under section 67 of the Act) give notice to the applicant or his agent and shall, if so required within one month of the date of such notice, appoint a date for a hearing in the matter and shall give ten days' notice thereof.

Controller may require statement. 44. Whether an applicant or agent desires to be heard or not the Controller may at any time require him to submit a statement in writing within a time to be notified by the Controller, or to attend before him and make explanation with respect to such matters as the Controller may require.

45. Applications for extension of the term of a patent under S. 15, or for amendment under S. 17 shall, if so directed by the Controller, be advertised by the applicant in not less than two newspapers published in British India. Copies of the newspapers containing those advertisements shall be supplied to the Controller.

Advertisement of such applications shall be made by the Controller by Notification in the *Gazette of India*.

46. Any document for the amending of which no special provision is made by the Act may be amended, and any irregularity in procedure which, in the opinion of the Controller, may be obviated without detriment to the interests of any person may be corrected if the Controller think fit, and upon such terms as he may direct.

47. The time prescribed by these Rules for doing any act or taking any proceeding thereunder may be enlarged by the Controller, if he thinks fit and upon such terms as he may direct.

INDIAN PATENTS AND DESIGNS RULES.

SCHEDULES.

I. Fees, section 57 and Rule 4.

II. Forms, Rules 6.

III. Model form of patent, section 13 and Rule 18.

IV. Classification of goods for designs, sections 43 (3) and 77 (1) (b) and Rule 26.*

THE FIRST SCHEDULE.

(Vide Section 57 and rule 4).

FEES.

Number of entry.	On what payable.	Number of Form.	Proper Fee
			Rs. A.
1	On application for a patent under section 3..	1 or 2	10 0
2	For extension of time to accept application under section 5 (4) ..	4	20 0
3	On notice of opposition under section 9 (1) ..	5	5 0
4	On hearing by Controller under section 9 (2). By applicant and opponent respectively ..	6	10 0
5	Before sealing under section 10 (1) ..	7	30 0
6	On extension of time for sealing under section 10 (2) (d) ..	4	..
	One month .. ..	..	10 0
	Two months .. ..	..	20 0
	Three months .. ..	..	30 0

THE PARTITION ACT, 1893.

TABLE OF CASES NOTED IN THIS ACT.

I.L.R. Allahabad Series.		PAGE
13 A 282	Amme Raham v. Zia Ahmad	... 10
20 A 311	Shah Muhammad Khan v. Hanwant Singh	... 13
21 A 409	Abdus Samad Khan v. Abdur Razzaq Khan	... 6, 7, 13
29 A 308	Hashmat Ali v. Muhammad Umar	... 8, 9, 10
30 A 324 (F B)	Sultan Begam v. Debi Prasad	2, 5, 7 8, 9, 10
I.L.R. Bombay Series.		
23 B 73	Vaman Vishnu Gokhale v. Vasudev Morbhat Kale	... 9
23 B 77	Balshet Gopalshet Sonar v. Meran Saheb	... 6
32 B 103	Bai Hirakore v. Trikamdas Hirachand	...4, 5, 6, 7
I.L.R. Calcutta Series.		
10 C 675	Ashanullah v. Kali Kinkur Kur	
I.L.R. Madras Series.		
24 M 639 (641)	Kadir Bacha Saheb v. Abdul Rahiman Saheb	4, 6, 7
Allahabad Law Journal.		
1 A L J 474	Muhammad Husain Khan v. Kallu	... 11
4 A L J 203	Hashmat Ali v. Muhammad Umar	... 8, 9, 10
5 A L J 352 (354)	Sultan Begam v. Debi Prasad	2, 4, 5, 7, 8, 9, 10
Allahabad Weekly Notes.		
A W N (1895) 231..	Mangal Sen v. Rup Chand	... 6
A W N (1898) 99 ..	Zubaida Jan v. Muhammad Taieb	... 13
A W N (1907) 52 ..	Hashmat Ali v. Muhammad Umar	... 8, 9, 10
A W N (1908) 126..	Sultan Begam v. Debi Prasad	2, 4, 5, 7, 8, 9, 10
Bombay Law Reporter.		
10 Bom L R 23 ..	Bai Hirakore v. Trikamdas Hirachand	...4, 5, 6, 7
Calcutta Law Journal.		
6 C L J 8	Basant Kumar Ghose v. Motilal Ghosh	... 11
7 C L J 98	Kali Kumar Mukerji v. Brahmananda Mukerji	... 6, 11
10 C L J 503	Satya Kumar Banerjee v. Satya Kripal Banerjee	... 6, 7
12 C L J 525	Kshirode Chunder Ghosal v. Saroda Prosad Mitra	... 6, 7
Calcutta Weekly Notes.		
5 C W N 128	Hira Moni Dassi v. Radha Churn Kar	...4, 5, 6, 7
15 C W N 552	Debendra Nath Bhattacharjee v. Hari Das Bhattacharjee	4
15 C W N 555	Basunta Kumar Ghosh v. Moti Lal Ghosh	... 4, 11
Madras Law Times.		
3 M L T 141	Bai Hirakore v. Trikamdas Hirachand	...4, 5, 6, 7
4 M L T 38 (F B).	Sultan Begam v. Debi Prasad	2, 4, 7, 8, 9, 10
Punjab Record.		
36 P R 1907	Mrs. Edith Susan Mukerjee v. Messrs. George Alfred ...	

TABLE OF CASES.

Punjab Weekly Reporter.		PAGE
52 P W R 1907 ...	Mrs. Edith Sunar Mukerjee v. Messrs. George Alfred	
Central Provinces Law Reports.		
17 C P L R 45 (47) ...	Seth Jadia Sunar v. Baldeo Prasad Sunar	2, 3
Oudh Cases.		
9 O C 156 (159)	Kalka Parashad v. Bankey Lall	8, 10
Indian Cases.		
1 Ind Cas 697 (698).	Mukerji v. Alfred	3
3 Ind Cas 247 ...	Satya Kumar Banerjee v. Satya Kirpal Banerjee	6
7 Ind Cas 136 ...	Khirode Chandra Ghosal v. Saroda Prasad Mitra	6, 7, 11
7 Ind Cas 844 ...	Debendra Nath Bhattacharjee v. Hari Das Bhatta- charjee	11
English Cases.		
3 Deg and S 653 ...	Brighten and South Coast Ry., Co.	7
33 Beav 103 ...		7
2 N R 566 ...		7
L R 14 Eq 160 ...	But v. Hellyar	8
9 L T 134 ...	Fergusson v. London B. and S. C. Ry., Co.	7
33 L J Ch 29 ...	_____ v. _____	7
11 W R 1088 ...	_____ v. _____	7
7 Jur (N S) 265 ...	Governors of St. Thomas Hospital v. Charmy Cross Ry., Co.	7
30 L J Ch 395 ...	_____ v. _____	7
1 J and H 400 ...		7
1 W R 511 ...	Green v. Marsden	8
22 L J Ch 1092 ...	_____ v. _____	8
1 Eq R 437 ...	_____ v. _____	8
1 Drew 646 (651) ...	_____ v. _____	8
52 J P 87 ...	Kerford v. Seacombe & Ry., Co.	7
36 W R 431 ...	_____ v. _____	7
58 L T 445 ...	_____ v. _____	7
57 L J Ch 270 ...	_____ v. _____	7
16 T L R 184 ...	Low v. Staines	7
64 J P 212 ...	_____ v. _____	7
5 App Cas 651 ...	Pitt v. Jones	4, 11
29 W R 33 ...	_____ v. _____	11
43 L T 385 ...	_____ v. _____	11
49 L J Ch 795 ...	_____ v. _____	11
L R 1 Ch App 275.	Steel v. Midland Ry., Co.	7
14 W R 367 ...	_____ v. _____	7
14 L T 3 ...	_____ v. _____	7
12 Jur (N S) 218 ...	_____ v. _____	7
23 W R 779 ...	Williams v. Games	11
32 L T 414 ...	_____ v. _____	11
L R 10 Ch App 204.	_____ v. _____	4, 11
44 L J Ch 245 ...	_____ v. _____	11
98 Am Dec 553 ...	Wilson v. Cochran	8
31 Tenas 677 ...	_____ v. _____	8

THE PARTITION ACT, 1893.

INDEX.

- Note:—**1. The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.
2. S in Brevier Roman denotes the section.

A

Act IV of 1893, Statement of Objects and Reasons, **A, 1.**

Report of the Select Committee, **B, 1.**

Proceedings in Council, **C, 1.**

Civil Rules of Practice made by the Madras High Court, **D, 1.**

Act declared in force in Upper Burma, **E, 1.**

Reasons for the passing of this Act—Nature of the Act, **F—R, 1, 2.**

A general, **S, 2.**

Applicability of, **T, 2.**

Title, extent, commencement and saving, **S. 1, 3.**

Application of, to pending suits, **S. 10, 12.**

Partition suit instituted before commencement of,—Interlocutory decree—Offer by party to pay compensation to other to avoid partition of house-property, **G—I, 13.**

B

Bidding, Reserved, and, by shareholders, **S. 6, 12.**

C

Civ. Pro. Code, 1882, S. 331—Resistance or obstruction—Decree for partition—Decree for possession, **F, 11.**

S. 396—Preliminary decree—Order for sale, **I, 5.**

Civil Rules of Practice, made by the Madras High Court, **D, 1.**

Common user, Partition of the house-latrine—Compensation for the sale of a latrine and for passage thereto, **U, 3.**

Compensation, Partition of house-latrine—, for the sale of a latrine and for passage thereto, **U, 3.**

Partition suit instituted before commencement of Act—Interlocutory decree—

Offer by party to pay, to others to avoid partition of house-property, **G—I, 13.**

Court, Power of, to order sale instead of division in partition suit, **Ss. 2, 3, A—G, 4, 5.**

D

Decree, in lieu of share—Competency of Court to award money, **X, 3.**

for partition—Power of Court to order sale instead of division, **A—G, 4, 5.**

Civ. Pro. Code, 1882, S. 331—Resistance or obstruction—, for partition—Decree for possession, **F, 11.**

Orders for sale to be deemed, **S. 8, 12.**

Division, Power of Court to order sale instead of, in partition suits, **S. 2, 3.**

Property not capable of,—Plaintiff if may sue for sale of share by defendant at a valuation—All share-holders to bid for property, **N, 4.**

Power, of Courts to order sale instead of,—Decree for partition, **A—G, 4, 5.**

Dwelling house, Partition suit by transferee of share in, S. 4, 6.
 Mahomedan, S. 4 applies to, U, 7.

E

Execution of decree, Partition of a house in two divisions—The mode of division found inexpedient in, H, 5.

F

Family, Meaning, V, 7.

H

Hindus, Applicability of S. 2 of the Act, Y, 4.

Applicability of S. 3 of the Act, J, 5.

House, Partition of a, in two divisions—The mode of division, found inexpedient in execution of the decree, H, 5.
 scope of the term, T, 7.

I

Interlocutory decree, Partition suit instituted before commencement of Act,—Offer by party to pay compensation to other to avoid partition of house-property, G—I, 13,

M

Madras High Court, Civil Rules of Practice made by the, D, 1.

Mahomedans, Applicability of S. 2 of the Act, Y, 4.

Applicability of S. 3 of the Act, J, 5.

Undivided family, meaning of—S. 4, Partition Act, whether applicable to, F—H, 9, 10.

P

Partition, of the house-latrino—Common user—Compensation for the sale of a latrine and for passage thereto, U, 3,

need not be by metes and bounds, V, W, 3.

Possession by, claimed—Competency of Court to award money—Decree in lieu of share, X, 3.

Decree for,—Power of Court to order sale instead of division, A—G, 4, 5.

Procedure when sharer undertakes to buy, S. 3, 5.

of a house in two divisions—The mode of division found inexpedient in execution of the decree, H, 5.

Sale of property of which, is sought—Right to apply for leave to purchase, K, L, 6.

Application under S. 4 may be made after preliminary decree—Elements necessary to attract operation of section, M—S, 6, 7.

Property not conveniently divisible—Sale among co-sharers to highest bidder, A, 10, 11.

Plot built on by co-sharer, not convenient for division—Partition of tank—Court's discretion to refuse partition and to allow the party in possession to buy the other party out—Equity, B, C, 11.

Suit for,—Extension, D, E, 11.

Civ. Pro. Code, 1882, S. 331—Resistance or obstruction—Decree for,—Decree for possession, F, 11.

Suit for,—Representation of parties under disability, S, 5, 12.

Saving of power to order partly, and partly sale, S. 9, 12.

Suit instituted before commencement of Act—Interlocutory decree—Offer by party to pay compensation to other to avoid partition of house-property, G—I, 13.

Partition suits, Power to Court to order sale instead of division in, S. 2, 3.

by transferee of share in dwelling house, S. 4, 6.

Pending suits, Application of Act to—, S. 10, 12.

Procedure, when sharer undertakes to buy, S. 3, 5.

Preliminary decree, Order for sale—Civ. Pro. Code, (Act XIV of 1882) S. 396, I, 5.

Application under S. 4 may be made after,—Elements necessary to attract operation of section, M—S, 6, 7.

Procedure, to be followed in case of sales, S. 7, 12.

S

Sale, Power to Court to order, instead of division in partition suits, S. 2, 3.

Partition of the house-latrines—Common-user—Compensation for the, of a latrine and for passage thereto, U, 3.

Plaintiff if may sue for, of share by defendant at a valuation—All share-holders to bid for property—Property not capable of division, Z, 4.

Power of Court to order, instead of division—Decree for partition, A—G, 4, 5.

of property of which partition is sought—Right to apply for leave to purchase, K, L, 6.

• Partition—Property not conveniently divisible—, among co-sharers to highest bidder, A, 10, 11.

Reserved bidding and bidding by share-holders, S. 6, 12.

Procedure to be followed in case of—, S. 7, 12.

Orders for, to be deemed decrees, S. 8, 12.

Saving of power to order partly partition and partly—, S. 9, 12.

Share-holders, Reserved bidding and bidding by—, S. 6, 12.

Sharer, Procedure when, undertakes to buy, S. 3, 5.

T

Transferee, Partition suit by, of share in dwelling house, S. 4, 6.

U

Undivided family, Meaning, E, 8.

• Meaning of—S. 4, Partition Act, whether applicable to Mahomedans, F—Z, 9, 10.

W

Words and phrases, "House," scope of the term, T, 7.

Family—meaning, V, 7.

Undivided family—Meaning, E, 7.

Number of entry.	On what payable.	Number of Form.	Proper Fee.
			Rs. A.
	On certificate of renewal under section 14 ...		
	Before expiration of 4th year in respect of the 5th year ...		50 0
	Before expiration of 5th year in respect of the 6th year ...		50 0
	Before expiration of 6th year in respect of the 7th year ...		50 0
	Before expiration of 7th year in respect of the 8th year ...		50 0
	Before expiration of 8th year in respect of the 9th year ...		50 0
	Before expiration of 9th year in respect of the 10th year ...		100 0
	Before expiration of 10th year in respect of the 11th year ...		100 0
	Before expiration of 11th year in respect of the 12th year ...		100 0
	Before expiration of 12th year in respect of the 13th year ...		100 0
	Before expiration of 13th year in respect of the 14th year ...		100 0
	<i>Note.—The fees for two or more years may be paid in advance.</i>		
	On enlargement of time for payment of renewal fees under section 14 (2) ...		
	One month ...		10 0
	Two months ...		20 0
	Three months ...		30 0
9	On petition for extension of term of patent under section 15 ...		50 0
10	On certificate of renewal in respect of each year under section 15 ...		100 0
11	On application for restoration of lapsed patent under section 16 ...	9	100 0
12	On opposition to restoration under section 16 ...	5	5 0
13	On hearing by Controller under section 16. By applicant and opponent, respectively ...	6	10 0
14	On application to amend under section 17 ...	10	...
	Before acceptance ...		10 0
	After acceptance ...		20 0
15	On opposition to amendment under section 17 (3) ...		
16	On hearing by Controller under section 17 (4). By applicant and opponent, respec- tively ...	6	10 0
17	On petition for compulsory license or revo- cation under sections 22 and 23 ...	...	10 0
18	On offer to surrender a patent under section 24 ...	11	10 0
19	For duplicate of a patent under section 39 ...	12	10 0
20	On notice to Controller of intended exhibition of an invention or design under section 40 or 52 ...	13	5 0
21	On request to register design under section 43 in classes 1 to 6 and class 16 ...	14	...
	in classes 7 to 15 ...	...	3 0
	...	...	0 3
22	On request for written decision under Rule 32 ...	15	5 0

Number of entry.	On what payable.	Number of Form.	Proper Fee.	
			Rs.	A.
23	On request to extend copyright under section 47 ...	16	10	0
24	On request to inspect under section 50 ...	17	1	0
25	On request for information under section 51.	18	...	
	when number is given ...		2	0
	when number is not given ...		4	0
26	On inspection of the register under section 59			
27	On request for certificate under section 59 ...	19	1	0
	An additional fee of 4 annas for every 100 words in excess of 400 words will be charged.		2	0
	Drawings will be charged according to agreement.			
28	On request to correct or cancel entry in register under section 62 ...	20	3	0
29	On request to enter claim in register under section 63 ...	21	5	0
30	On request to alter address in register ...	22	1	0
31	On entry of order of Court under section 64 (4) ...	23	3	0
32	On appeal from the Controller to the Governor (General in Council under section 70.	24	30	0
33	On application for a patent in place of an exclusive privilege under section 81 ...	25	3	0
34	On opposition to grant thereof under section 81 ...	5	5	0
35	On hearing by Controller under section 81 (3). By applicant and opponent, respectively ...	6	10	0

THE SECOND SCHEDULE.

Forms.

List of Forms.

Form No.	Act, Section.	Title.	Fee.
			Rs.
1	3	Application for patent	10
2	3	Do. do.	10
3	4	Specification	
4	5 (4), 10 (2), 14 (2)	Application for extension of time	10, 20, 30
5	9 (1), 16, 17, 81	Notice of opposition	5
6	9 (2), 16, 17, 81	Notice of intention to attend hearing	10
7	10	Request for sealing	30
8	11	Request for certificate or renewal	50 or 100
9	16	Application for restoration of patent	100
10	17	Application to amend	10 or 20
11	24	Offer to surrender patent	10
12	39	Application for duplicate patent	10
13	40 and 52	Notice of intended exhibition	5
Designs.			
14	43	Application for registration	Annas 8 or Rs. 3.
15	...	Request for grounds of decision	...
16	47	Application for extension of copyright	10

Form No.	Act Section.	Title.	Fee.
17	50	Request to inspect design ...	Rs. 1
18	51	„ for information ...	2 or 4
<i>General.</i>			
19	59	Request for certificate ...	2
20	62	„ to cancel or correct ...	3
21	63	„ for entry in register ...	5
22	63	„ for entry of address ...	1
23	64	Entry of order of Court ...	3
24	5 (2), 9 (3), 16 (5), 17 (6), 43 (4), 70	Appeal ...	30
25	81	Application for conversion of exclusive privilege ...	3
26	76	Power of authority to agent ...	...
27	76	Statement of address ...	...

Form 1.

(Form to be used when the true and first inventor is sole or joint applicant.)

INDIAN PATENTS AND DESIGNS ACT, 1911.**Application for Patent, Section 3.**

To be accompanied by the specification on Form 3 in duplicate.

I (or we) 1

do hereby declare :—

(i) that I am (or we are) in possession of an invention of which the title is 2...

(ii) that I (or we) (or the said 3.....) claim to be the true 3, and first invention thereof ;

(iii) That the invention is not in use by any other person ;

(iv) that the specification filed with this application is, or any amended specification which may hereafter be filed in this behalf will be, true of the invention to which this application relates ;

(v) that the facts and matters stated herein are true to the best of my (or our) knowledge, information and belief.

I (or we) humbly pray that a patent may be granted to me (or us) for the said invention.

Date and Sign. Dated this..... day of.....19.....
(Signed).....

To the

Controller of Patents,
1, Council House Street, Calcutta.

1. Insert name, calling and address. 2. Insert title. 3. Insert name.

Fee Rs. 10.

8. Insert full name, calling and address.

Note.—In the preparation of the claim or claims careful attention should be paid to the terms of Rule 11 of the Indian Patents and Designs Rules, 1912. Any unnecessary multiplicity of claims or prolixity of language should be avoided.

Form 4.

Fee Rs. 10, 20 or 30
See note below.

INDIAN PATENTS AND DESIGNS ACT, 1911.

Application for extension of time, sections 5, 10 or 14.

I (or we) 1.....
do hereby apply for.....months' extension of time :—

2 (a) Under section 5 (4) for the acceptance of the application for a patent
No.....of.....

„ (b) Under section 10 (2) (d) for the sealing of a patent on application No.....
of.....

„ (c) Under section 14 (2) for payment of renewal fees on patent No.....
of.....

The reasons for making this application are as follows 3 :—

.....
My or our address for service in British India is 4 :—

Date and sign.

Dated this.....day of.....19...

Signed.....

To the

Controller of Patents,
1, Council House Street, Calcutta.

Note.—Time allowed and fees payable—

(a) Three months, Rs. 20.

(b) or (c) One month, Rs. 10 ; two months, Rs. 20 ; three months, Rs. 30.

Form 5.

Fee Rs. 5.

INDIAN PATENTS AND DESIGNS ACT, 1911.

Notice of opposition, sections 9, 16, 17 or 81.

(To be supplied in duplicate).

I (or we) 8..

1. Insert name, calling and address.

2. a, b, c, strike out when not applicable. Quote number and year of application
or patent.

3. Insert reasons.

4. Insert address.

5. Insert name, calling and address.

do hereby give notice of my (or our) intention to oppose—

- 1 (a) Under section 9, the grant of a patent.
- „ (b) Under section 16, the restoration of lapsed patent.
- „ (c) Under section 17, the amendment.
- „ (d) Under section 81, the conversion of an exclusive privilege.

upon application for patent No. 2.....of 19.....entitled.....
 applied for by 3.....

The grounds of opposition are as follows 4 :—

I (or we) declare that the facts and matters stated herein are true to the best of my (or our) knowledge, information and belief.

My (or our) address for service in British India is 5 :—

Date and Sign.

Dated this.....day of.....19.....

Signed.....

To the

Controller of Patents,

1, Council House Street, Calcutta.

Fee Rs. 10.

Form 6.

INDIAN PATENTS AND DESIGNS ACT, 1911.

Notice of intention to attend hearings of opposition, sections 9, 16, 17 and 81.

I (or we) 6
 hereby give notice that the hearing in reference to 7

will be attended by myself (or ourselves) or by some person on my (or our) behalf.

Date and sign.

Dated this.....day of.....19.....

(Signed).....

To the

Controller of Patents,

1, Council House Street, Calcutta.

Note.—The Controller may refuse to hear any party who has not left this notice and paid the prescribed fee at least two clear days before the date fixed for the hearing.

1. a, b, c, d, strike out when not applicable.
2. Insert number, date and title.
3. Insert name of person making application which is opposed.
4. Insert grounds.
5. Insert address.
6. Insert name, calling and address.
7. Insert particulars.

Form 7.

Fee Rs. 30.

INDIAN PATENTS AND DESIGNS ACT, 1911.

Request for sealing, section 10.

I (or we) 1
 desire to have a patent sealed on my (or our) application 2 of.....

 and request that the following address in British India may be entered on the Register
 as my (or our) address for service in British India 3.....

Date and sign.

Dated this.....day of.....19....
 (Signed).....

To the

Controller of Patents,

1, Council House Street, Calcutta.

Note.—If a patent is to be sealed, so that rights may accrue under section 12 of the Act, this request, together with the fee of Rs. 30, must be received in the Patent Office before the expiration of 18 months from the date of the application or within such extended times as are allowed in section 10 (2). An extension of time not exceeding three months shall be allowed under section 10 (2) (d) on application being made on Patents Form No. 4 accompanied by the fee of Rs. 10 for one month, Rs. 20 for two months or Rs. 30 for three months.

Form 8.

Fee Rs. 50 or 100.

INDIAN PATENTS AND DESIGNS ACT, 1911.

Request for certificate of payment or renewal, section 14.

I (or we) transmit the fee of Rs.....by 4.....in payment of the renewal fee on patent No.....of.....granted to.....

 and request that the usual certificate may be granted.

Dated this.....day of.....19.....

Signature.....

Address.....

To the

Controller of Patents,

1, Council House Street, Calcutta.

-
1. Insert name, calling and address. 2. Insert number and date.
 3. Insert address for service. 4. State whether cash, note, money order or postal order.

Form 9.

Fee Rs. 50 or
Rs. 100.

INDIAN PATENTS AND DESIGNS ACT, 1911.

Restoration of Patent, section 16.

I (or we) a

hereby apply for an order of the Controller for restoration of the patent No. b.....
of.....granted to.....

The circumstances which have led to the omission to pay the fee of Rs. con or
before the d.....day of.....as are follows e :.....

I (or we) declare that the facts and matters stated herein are true to the best of
my (or our) knowledge, information and belief.

My (or our) address for service in British India is f

Date and sign. Dated this.....day of.....19.....

(Signed).....

To the

Controller of Patents,

1, Council House Street, Calcutta.

Form 10.

Fee Rs. 10 before |
acceptance. Rs. 20 |
after acceptance. |

INDIAN PATENTS AND DESIGNS ACT, 1911.

Amendment, section 17.

I (or we) a.....

seek leave to amend the g.....

-
- a. Insert name, calling and address.
 - b. Insert number and date.
 - c. Insert amount.
 - d. State last date when fee was due.
 - e. The circumstances must be stated in detail.
 - f. Insert address for service.
 - g. State whether application specification or drawings.

.....of application for patent No. **a**.....dated.....
 as shown in red ink in the copy **b** hereunto annexed.

c I (or we) declare that no suit for infringement or proceedings before a Court for revocation of the Patent in question is pending.

My (or our) reasons for making this amendment are as follows **d** :.....

I (or we) declare that the facts and matters stated herein are true to the best of my (or our) knowledge, information and belief.

My (or our) address for service in British India is **e**

Date and sign.

Dated this.....day of.....19.....

(Signed).....

To the

Controller of Patents,

1, Council House Street, Calcutta.

Form 11.

Fee Rs. 10.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Surrender of Patent, section 24.)

I (or we) **f**.....

hereby offer to surrender the Patent No. **a**
 dated.....granted to

No suit for infringement or proceedings for revocation of the patent is pending.
 My (or our) reasons for making this offer are as follows **d**.....

I (or we) declare that the facts and matters stated herein are true to the best of my (or our) knowledge, information and belief.

My (or our) address for service in British India is **e**.....

Date and sign. Dated this.....day of.....19.....

(Signed)

To the

Controller of Patents,

1, Council House Street, Calcutta.

a. Insert number and date.

b. If the specification has been printed, an officially printed copy shall be used.

c. Strike out this paragraph if a patent has not been sealed.

d. Insert reasons.

e. Insert address.

f. Insert name, calling and address.

Form 12.

Fee Rs. 10.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Application for Duplicate Patent, section 39.)

I (or we) a.....

 regret to have to inform you that the Patent No. b.....
 dated
 granted to.....c.....
 has been d.....

I (or we) declare that the facts and matters stated herein are true to the best of my (or our) knowledge, information and belief.

I (or we) beg therefore to apply for the issue of a duplicate of such patent.

Date this.....day of.....19.....

(Signed)

To the

Controller of Patents,

1, Council House, Street, Calcutta.

Form 13.

Fee Rs. 5.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Notice of Intended Exhibition, section 40 and section 52.)

I (or we) a.....

 hereby give notice that I (or we) intend to exhibit my (or our) invention (or design) e

a. Insert name, calling and address.

b. Insert number and date.

c. Insert name of original grantee.

d. Insert the word "lost" or "destroyed" as the case may be and state fully the circumstances. Also state the interest possessed by the applicant in the patent.

e. Insert short description of invention or design.

.....
at the a.....exhibition certified or notified by
 the Governor-General in Council under section 40152 of the Indian Patents and Designs
 Act, 1911, as an international or industrial exhibition.

Date and sign. Date this.....day of.....19.....

(Signed).....

To the

Controller of Patents,

1, Council House Street, Calcutta.

Form 14.

Fee Annas 8 or
 Rs. 3 according
 to classification.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Application for Registration of Design, section 43.)

You are requested to register the accompanying design in Class No. b.
 in the name of c.....
 who claims to be the proprietor thereof.

Four exactly similar d.....of the design accompany this request.

The design is to be applied to e.....Address for service in
 British India is f ;.....

Date and sign. Dated this.....day of.....19

(Signed).

To the

Controller of Designs,

1, Council House Street, Calcutta.

Note.—Trade or property marks are not registered under the Patents and Designs
 Act, 1911.

-
- a. Insert name.
 - b. Insert number of class.
 - c. Insert name, calling and address.
 - d. State whether drawings, photographs, tracings, or specimens.
 - e. Insert name of article or articles to which design is to be applied.
 - f. Unless an address for service in British India is given, the request will not be considered.

Form 15.

Fee Rs. 5.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Request Under Rule 32.)

Application for design No.
 Class

You are hereby requested under Rule 32 of the Patents and Designs Rules to state in writing the grounds of your decision and the materials used by you in arriving at such decision.

Address for service in British India is :

Date this day of 19

(Signed)

To the

Controller of Patents,

1, Council House Street, Calcutta.

Form 16.

Fee Rs. 10.

INDIAN PATENTS AND DESIGNS ACT, 1911,

(Application to extend Copyright, section 47.)

You are requested by the undersigned who is the registered proprietor of the Design No. registered in class to extend the period of copyright for a period of five years.

Two copies of the design are attached.

Address for service in British India is :

Dated this day of 19

(Signed)

To the

Controller of Patents,

1, Council House Street, Calcutta.

Form 17.

Fee Rs. 1.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Inspection of Design, section 50.)

You are requested by the undersigned who is the registered proprietor of the design No. a..... registered in Class No. to allow him or his nominee b..... to inspect the design.

Dated this day of 19

Signed

Address

Signature of nominee.....

To the

Controller of Designs,

1, Council House Street, Calcutta.

Form 18.

Fee Rs. 2 or 4.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Request for information, section 51.)

You are requested to give to the undersigned such information as he may be entitled to under section 51 of the Act in respect of the design No

Address for service in British India is :.....

Dated this day of 19

(Signed).....

To the

Controller of Designs,

1, Council House Street, Calcutta.

Note.—If the number cannot be given and information is required regarding a design, two samples of the design may be attached to this form which must then be accompanied by a fee of Rs. 4.

a. Insert number and class.

b. Insert name of nominee who must also sign the application.

Form 19.

Fee Rs. 2. See
foot-note.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Request for Certificate, section 59.)

In the matter of { Patent No. a.....of . .
Design No.class.

I (or we) b.....

hereby request you to furnish me (or us) with your certificate to the effect that c...
and to send the certificate to d.....

Dated this.....day of.....19.....

(Signed).....

To the

Controller of Patents and Designs,

1, Council House Street, Calcutta.

Note.—An extra charge of annas four will be charged for every 100 words in excess of 400. The certificate will not be supplied until the charge is paid.

Form 20.

Fee Rs. 3.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Request for correction or cancellation, section 62 of Act.)

In the matter of { Patent No. a.....of.....
Design No.class.....

I (or we) b.....

hereby request you under the power given by section 62 of the Indian Patents and Designs Act, 1911, to e.....

-
- a. Insert number and date.
 - b. Insert name, calling and address.
 - c. Here set out the particulars which the controller is requested to certify.
 - d. Insert name and address. Date and sign.
 - e. Insert particulars.

My (or our) address for service in British India is a;.....
 Date and sign. Dated this.....day of19.....

To the (Signed).....

Controller of Patents and Designs,
 1, Council House Street, Calcutta.

From 21.

Fee Rs. 5.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Request for Entry in Register, section 63.)

In the matter of { Patent No. b.....of
 Design No.class.....

1 (or we) c.....

claim to be entitled by (or as) d.....

to the following interest e.....

{ f in the Patent No.of.....
 in the registered design No.class.....

granted to g.....

in proof whereof I (or we) transmit the accompanying h.....
 together with an attested copy thereof and I (or we) request that an entry may be made
 in the Register.

My (or our) address for service in British India is a :.....

Date and sign. Dated this.....day of19.....

(Signed).....

To the

Controller of Patents and Designs,
 1, Council House Street, Calcutta.

-
- a. Insert address
 - b. Insert number and date.
 - c. Insert name, calling and address.
 - d. Insert ground of claim whether by assignment, transmission, etc., or as mortgagee, licensee or otherwise.
 - e. Insert nature of interest.
 - f. Insert number and date of patent, or number and class of the registered design.
 - g. Insert name.
 - h. Insert nature of document.

Form 22.

Fee Rs. 1.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Entry of Alteration of Address.)

In the matter of { Patent No. of
 { Design No. class.

I (or we) a.

hereby request that the following address in British India may be entered in the Register, viz., b.
 and request that the existing address which is as follows may be cancelled c.

Date and sign. Dated this day of 19
 (Signed)

To the

Controller of Patents and Designs,
 1, Council House Street, Calcutta.

Note.—This form may only be used for a request to correct a name or alter an address upon the Register. It may not be used as a request to register any change of interest in a patent or registered design.

Form 23.

Fee Rs. 3.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Entry of Order of Court, section 64)

I (or we) a.
 hereby transmit an office copy of an order of the Court with reference to d.

.....and request that the register may be rectified.

Date and sign. Dated this day of 19
 (Signed)

To the

Controller of Patents and Designs,
 1, Council House Street, Calcutta.

-
- a. Insert name, calling and address.
 b. Insert address to be entered.
 c. Insert address to be cancelled.
 d. Insert purport of order.

Form 24.

Fee Rs. 30.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Appeal to Governor-General in Council under sections 5, 9, 16, 17, 43 or 70.)

I (or we) **a**.....
 hereby appeal to the Governor-General in Council from the decision (or that part of the decision) **b** of the Controller, dated the **c**.....day of19.....
 whereby he—

- (a) refused to accept an application for a patent under section 5 ;
- (b) required an amendment under section 5 ;
- (c) decided an opposition under section 9 ;
- (d) restored a lapsed patent under section 16 ;
- d** (e) refused to restore a lapsed patent under section 16 ;
- (f) allowed an amendment under section 17 ;
- (g) refused to allow an amendment under section 17 ;
- (h) refused to register a design under section 43.

The reasons for appealing, and the full statement of the grounds upon which I (or we) rely for objecting to the decision, are as follows **e** :—

Note.—This form in duplicate should be sent to the Controller of Patents and Designs, 1, Council House Street, Calcutta, who will proceed under Rule 41.

Form 25.

Fee Rs. 3.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Application for conversion of exclusive privilege, section 81.)

(To be accompanied by the order under which the exclusive privilege was obtained)

I (or we) **a**.....
 do hereby declare :—

- a.** Insert name, calling and address.
- b.** Strike out if not applicable.
- c.** Insert date of decision. The appeal must be made within two months of that date.
- d.** Strike out parts not applicable.
- e.** State fully, continuing on further sheets and on one side only. The last page must be dated and signed.

(i) that I am (or we are) in possession under the Inventions and Designs Act, 1888, of an exclusive privilege registered as No. **a**.....of

.....and obtained by.....

(ii) that no other person has any share or interest in the said exclusive privilege **b**

(iii) that the facts and the matters stated herein are true to the best of my (or our) knowledge, information and belief.

I (or we) pray that a patent under the Indian Patents and Designs Act, 1911, may be granted to me (or us) in substitution for, and bearing the same date as, the said exclusive privilege.

Date and sign. Dated this.....day of.....19.....

(Signed).....

To the

Controller of Patents and Designs,

1, Council House Street, Calcutta.

Note.—If any person has any share or interest in the exclusive privilege, his consent in writing should be obtained and forwarded with his application.

Form 26.

Stamp to be
attached, see
foot-note.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Power of Authority to Agent.)

In connection with **c**.....

I (or we), the undersigned hereby authorise **d**.....
of.....

to act as my Agent **b** and to receive all notices, requisitions and communications until further notice.

e And I (or we) revoke the previous authority given by me (or us) to **f**.....

a. Insert number and date.

b. See footnote.

c. State particulars.

d. Insert name and address of Agent.

e. Cancel if not required.

f. Insert name of Agent whose authority is cancelled.

in this matter.

a Dated this.....day of.....19.....

Signature.....

Address.....

To the

Controller of Patents and Designs,

1, Council House Street, Calcutta.

Note.—This form is liable to stamp duty under the Indian Stamp Act, II of 1889. When power is given to one or more persons as Agents to act in a single transaction, it will be sufficient if the form bears a special adhesive label of the value of one rupee only. When power is given to not more than five persons to act jointly and severally in more than one transaction, or generally in respect of several patents or designs applications, then a special adhesive label of five rupees value should be affixed.

Form 27.

INDIAN PATENTS AND DESIGNS ACT, 1911.

(Statement of Address.)

In connection with b.....

I (or we) the undersigned request that until further notice all notices, requisitions, &c., may be sent to c.....at

Date and sign. Dated thisday of19.....

Signature.....

To the

Controller of Patents and designs,

1, Council House Street, Calcutta.

THE THIRD SCHEDULE.

(Model Form of Patent.)

Government of India.

Patent.

No.....of.....19.....

Whereas A. B. of.....hath declared that he is in possession of an invention for.....(quote title).....and that he is the true and first inventor thereof (or the legal representative or assign of the true and first inventor) and that the same is not in use by any other person to the best of his knowledge, information and belief.

And whereas he hath humbly prayed that a patent might be granted to him for the said invention.

And whereas he hath by and his specification (of which a copy is hereunto annexed) particularly described and ascertained the nature of the invention and the manner in which the same is to be performed.

The Governor-General in Council is pleased to order by these presents that the above said petitioner (including his legal representatives and assigns or any of them)

a. Insert date, signature and address.

b. State particulars.

c. Insert name and address.

shall, subject to the provisions of the Indian Patents and Designs Act, 1911, as patentee have the exclusive privilege of making, selling and using the invention throughout British India (including British Baluchistan and the Santhal Parganas) and of authorizing others so to do for the term of 14 years from the.....day of..... 19.....subject to the condition that the validity of this patent is not guaranteed by Government & (and that Government shall have the right to use the invention either without payment or on such terms as it may consider reasonable) and also provided that the fees prescribed for the continuation of this patent are duly paid.

In witness whereof the Governor-General in Council has caused this patent to be sealed as of theday of.....19.....

Signature of Controller

Date of sealing.....

Note. — Renewal fees will be due on this patent, if it is to be continued, on theday of.....19.....and on the same day in each year thereafter.

THE FOURTH SCHEDULE.

(Classification of Goods.)

Class 1.—Articles composed wholly of metal or in which metal predominates not included in Class 2.

Class 2.—Jewellery.

Class 3.—Articles composed wholly of wood, bone, ivory, papiermache, or other solid substances not included in other classes, or of materials in which, such substances predominate.

Class 4.—Articles composed wholly of glass, earthenware, or porcelain, bricks, tiles, or cement, or in which such materials predominate.

Class 5.—Articles composed wholly of paper (except paper hangings), card-board, mill-board or straw-board, or in which such materials predominate.

Class 6.—Articles composed wholly of leather or in which leather predominates, and bookbinding of all materials.

Class 7.—Paper hangings.

Class 8.—Carpets and rugs in all materials, floorcloths, and oil cloths.

Class 9.—Lace.

Class 10.—Hosiery.

Class 11.—Millinery and wearing apparel, including boots and shoes.

Class 12.—Ornamental needlework on muslin or other textile fabrics.

Class 13.—Printed or woven designs on textile piece-goods (other than checks or stripes).

Class 14.—Printed or woven designs on handkerchiefs and shawls (other than checks or stripes).

Class 15.—Printed or woven designs (on textile piece-goods or on handkerchiefs or shawls) being checks or stripes.

Class 16.—Goods not included in other classes.

NOTICES.

THE PATENT OFFICE.

1, Council House Street, Calcutta.

Public room open, 11 A.M., to 4 P.M., Saturdays 11 A.M. to 1 P.M.

1. All communications relating to applications for leave to file specifications and for registration of designs under the Inventions and Designs Act (V of 1888), or in continuation of such applications, should be addressed to the Patents Secretary, 1, Council House Street, Calcutta. Documents sent by post should be carefully packed.

a. For Government Servant only.

2. *Directions* for the guidance of inventors and others are given in the Act Manual (Price Re. 1 or 1s. 6d.)

3. *Fees* payable under the fourth and sixth schedules are payable in cash and must be received in the office within the times allowed by the Act. When cheques are offered in payment of fees, it must be clearly understood that the office cannot hold itself responsible for any delay that may occur in the collection of cash on the cheques; any cheque not payable in Calcutta is subject to commission. In cases where it is not possible to have the fees handed in at the Patent Office, it would be preferable to have them sent by money order payable at Calcutta to the Patent's Secretary.

4. *Trade marks* are not registered and *medicines* are not patented under the Inventions and Designs Act.

5. *Applications* made under the Act are placed for inspection in the public room for ten days from the date of the *Gazette of India* in which their filing has been notified.

6. *Specifications* of inventions which have been notified as filed in the *Gazette of India* may be inspected on payment of a fee of one rupee at.—

Calcutta—Patent Office, 1, Council House Street.

Madras—Record Office, Egmore.

Bombay—Record Office.

Rangoon—Office of the Revenue Secretary to the Government.

Cawnpore—Office of the Director of Industries, United Provinces.

7. *Publications* on sale at the Patent Office :—

Price.
RS. A.

(a) Act Manual, comprising the Inventions and Designs Act (V of 1888) and an explanatory memorandum and directions for the guidance of parties applying for the protection of inventions or designs	..	1	0
(b) The Indian Patents and Designs Act, 1911 (II of 1911)	...	0	10
(c) Weekly Notifications (extract from the <i>Gazette of India</i>)	...	0	1
Annual subscription with postage	...	3	0
(d) Inventions (consolidated subject-matter index, 1900—1908, and chronological list 1900-1904)	...	2	0
(e) Inventions and Designs. Annual indexes for the years 1905, 1906, 1907, 1908, 1909, 1910	each	...	1 0
(f) Quarterly index, January to March and April to June, 1911	...	0	8

H.G. GRAVES,

Secretary under the Inventions and Designs Act, V of 1888.

INDIAN PATENTS AND DESIGNS ACT, 1911.*

TABLE OF CASES NOTED IN THIS ACT.

I. L. R. Allahabad Series.			PAGE
2 A 368	... Sheen v. Johnson	...	56
5 A 371	... Petman v. Bull	...	63
9 A 191 (P G)	... Ledgard v. Bull	...	69
17 A 490 (494)	... The Elgin Mills Company v. The Muir Mills Company	10, 50	
25 A 493 (496)	... Bahal Rai v. Sumer Chand	86, 87, 88, 98	
26 A 96	... Butler v. Butler	...	57
I. L. R. Calcutta Series.			
15 C 244	... <i>In the matter of</i> Act XV of 1859	...	51
*23 C 702 (709)	... <i>In the matter of</i> The Inventions and Designs Act, 1888	10, 11, 14	
Allahabad Law Journal.			
4 A L J R 11 (12)...	Sarnath Sanyal v. W. Butler	45, 53, 57, 66	
Allahabad Weekly Notes.			
† A W N (1883) 59.	Petman v. Bull	...	63
23 A W N 95	Bahal Rai v. Sumer Chand	...	93
23 A W N 193	Butler v. Butler	...	57
Calcutta Weekly Notes.			
8 C W N 843 (858)	Dinamoni Chaudhurani v. Elahadut Khan	...	11
10 C W N 985	... <i>In the matter of</i> The Inventions and Designs Act of 1888	50	
12 C W N 446	Kedarnath Mondal v. Gonesh Chandra Adak	...	57, 64
Punjab Record.			
115 P R 1889	Lala Ganda Mal v. Messrs. Walter Thompson and James Mylne	...	56, 61
24 P R 1896	Bhagat Hira Nand v. Hari Ram	...	56, 61
Law Reports, Indian Appeals.			
13 I A 134	... Ledgard v. Bull	...	63
English Cases.			
A			
Acetylene Illuminating Co. v. United Alkali Co., 1 Ch 494	...	73	
_____ v. _____, 50 W R 361	...	73	
_____ v. _____, 19 Rep Pat Cas 213	...	73	
_____ v. _____, 71 L J Ch 301	...	73, 74	
Adair v. Young, 22 Ch D 13	...	52	
Adair's Patent, <i>In re</i> , 29 W R 746	...	38	
_____, 6 App Cas 176	...	38	
Adams v. Clementson, 27 W R 379	...	87	
_____ v. _____, 12 Ch D 714	...	87	

* This is wrongly printed as '22 C 709.

† This is wrongly printed as 3 A W N 62.

TABLE OF CASES.

	PAGE
Adamson's Patent, <i>In re</i> , 6 De G M and 420	21
-----, 25 L J Ch 456	21
-----, 4 W R 473	21
Allan's Patent, <i>In re</i> , L R 1 P C 507	34
Allen v. Rawson, 1 C B 551	14
American Branded Wire Co. v. Thomson & Co., 5 Rep Pat Cas 375	71
Anglo American Brush Electric Light Corporation v. Crompton, 56 L J Ch 167	62
----- v. -----, 35 W R 125	62
----- v. -----, 34 Ch D 152	62
----- v. -----, 55 L T 722 ...	62
Automatic Weighing Machine Co. v. Combined Weighing Machine Co., 6 Rep Pat Cas 475	73
Axmanu v. Lund, L R 18 Eq 330	75
----- v. -----, 22 W R 789	75
----- v. -----, 43 L J Ch 655	75
----- v. -----, 31 L T 119	75

B

Bacon v. Jones, 4 Myl & C 433	68
Badische Anilin v. Henry Johnson and Co., 13 T L R 344	52
----- and Soda Fabrik v. Levinstein, 12 App Cas 710	20, 59
----- v. -----, 48 L T 822	59
----- v. -----, 57 L T 853	20
----- v. -----, 24 Ch D 156	59
----- v. -----, 52 L J Ch 704	59
----- v. -----, 31 W R 913	59
Bagot Pneumatic Tyre Co. v. Clippor Pneumatic Tyre Co., (1901) 1 Ch 122	56
Ball's Patent, 4 Ap Cas 171	37
-----, 48 L J P C 24	37
-----, 27 W R 477	37
Barney v. United Telephone Co., 33 W R 576	76
----- v. -----, 52 L T 573	76
----- v. -----, 28 Ch D 391	76
Barrett v. Day, 38 W R 362	81
----- v. -----, 62 L T 597	81
----- v. -----, 43 Ch D 435	81
----- v. -----, 59 L J Ch 464	81
Barron v. Lomas, 28 W R 973	88, 94
Batley v. Kynoch, 44 L J Ch 89	71
----- v. -----, 23 W R 52	71
----- v. -----, L R 19 Eq 30	71
Baxter v. Combe, 1 Ir Ch R 284	69, 70
Beard v. Egerton, 15 L J C P 270	23
----- v. -----, 10 Jur 643	23
----- v. -----, 36 B 97	23
Bedolls v. Massey, 7 Man and G 630	65
----- v. -----, 8 Scott (N R) 337	65
----- v. -----, 13 L J C P 173	65
----- v. -----, 8 Jur 808	65
Bell's Patent, 10 Jur 363	35
Bentley v. Fleming, 1 Car and K 587	83

TABLE OF CASES.

	PAGE
Bentley v. Keighley , 7 Scott (N R) 987	... 65
— v. —, 13 L J C P 167	... 65
— v. —, 1 D & L 944	... 65
— v. —, 6 Man & G 1039	... 65
Betts v. De Vitre , 16 W R 529	... 59
— v. —, 37 L J Ch 325	... 59
— v. —, L R 3 Ch 429	... 59
— v. —, 18 L T 165	... 59
— v. Galais, (1870) L R 10 Eq 392	... 54
— v. Menzies, 28 L J Q B 361	... 82
— v. —, 3 Jur (N S) 357	... 69
— v. —, 5 Jur (N S) 1164	... 82
— v. —, 11 W R 1	... 22
— v. —, 10 H L Cas 117	... 22, 69
— v. —, 31 L J Q B 233	... 22
— v. —, 9 Jur (N S) 29	... 22
— v. —, 7 L T 110	... 22
— v. Neilson, 13 W R 1028	... 59, 60
— v. —, 16 W R 524	... 23
— v. —, 37 L J Ch 321	23, 27, 29
— v. —, 18 L T 165	... 23
— v. —, 6 N R 221	... 59, 60
— v. —, 12 L T 719	... 59, 60
— v. —, 3 De G J & S 82	... 60
— v. —, 34 L J Ch 537	... 60
— v. —, 11 Jur (N S) 679	... 60
Bett's Patent , 7 L T 577	... 35, 38
—, 9 Jur (N S) 137	... 35, 38
—, 1 Moore P C (N S) 49	... 35, 39
—, 1 N R 137	... 35, 38
—, 11 W R 221	... 35, 38
— v. Walker, 14 Q B 363	... 62, 66
— v. —, 14 Jur 647	... 66
— v. Willmott, 19 W R 369	... 52
— v. —, 25 L T 188	... 52
— v. —, L R 6 Ch 239	... 52
Birdson v. Mc Alphine , 8 Beav 229	... 68
Bloram v. Elace , 30 R R 275	... 18
— v. —, 5 L J (O S) K B 104	... 19
— v. —, 1 Car & P 558	... 18, 76
— v. —, 6 B & C 169	... 19
— v. —, 9 D & R 215	... 18
Blyth and Fanshawe, In re , 10 Q B D 207	... 66
Booth v. Kennard , 3 Jur (N S) 21	... 64
— v. —, 26 L J Ex 23	... 64
— v. —, 1 H & N 527	... 64
— v. —, 5 W R 85	... 64
Bottle Envelope Co. v. Seymour , 5 Jur (N S) 174	... 17, 57
— v. —, 28 L J C P 22	... 17, 57
— v. —, 5 C B (N S) 164	... 17, 57
Boulton v. Bull , 3 R R 439	... 19

TABLE OF CASES.

	PAGE
Boulton v. Bull, 2 H B L 463 (500)	19
Bovil v. Goodier, 14 W R 91	61
— v. —, 35 Beav 264	61
— v. —, 35 L J Ch 174	61
— v. —, 11 Jur (N S) 900	61
— v. —, 13 L T 489	61
Bridson v. Benecke, 12 Beav 1	69
— v. M'Alpine, (1845) 8 Beav 229	68
Bridson's Patent, <i>In re</i> , 7 Moore P C 499	37
British Vacuum Cleaner Co. v. New Vacuum Cleaner Co., (1907) 2 Ch 312	55
Brooke v. Aston, 4 Jur (N S) 279	19
— v. —, 5 Jur (N S) 1025	19
— v. —, 8 El and Bl 478	17
Bulnois v. Mackenzie, 4 Bing (N O) 127	62
— v. —, 6 D P C 215	62
— v. —, 7 L J C P 33	62
— v. —, 5 Scott 439	62
Bunnett v. Smith, 2 D & L 380	64
Burnett v. Tak, 45 L T 743	76

C

Cable v. Marks, 52 L J Ch 107	87
— v. —, 47 L T 432	87
— v. —, 31 W R 221	87
Caldwell v. Vanvliessengen, 9 Hare 428	21, 69
— v. —, 16 Jur 115	21, 69
— v. —, 21 L J Ch 97	21, 69
Cannington v. Nuttall, L R 5 H L 205	15, 48
— v. —, 40 L J Ch 739	15, 48
Carpenter v. Smith, 9 M and W 300	21
— v. —, 11 L J Ex 213	21
Carr's Patent, <i>In re</i> , L R 4 P C 539	37, 40
—, 9 Moore P C (N S) 379	37, 40
Cellular Clothing Company v. Maxton and Murray, (1899) A C 326 (346)	55
Challender v. Royle, 57 L T 734	80
— v. —, 36 W R 357	80
— v. —, 56 L J Ch 995	79, 80
— v. —, 36 Ch D 425	80
Clark v. Adie, 35 L T 349	20
— v. —, 37 L T 1	22, 23
— v. —, 8 Ch D 134	20
— v. —, 45 L J Ch 228	20
— v. —, 46 L J Ch 598	22, 23, 27
— v. —, 2 App Cas 423	22, 23
— v. —, 24 W R 1007	20
— v. —, 25 W R 45	22, 23
— v. Kenrick, 12 M & W 219	64, 65
— v. —, 1 D and L 392	65
— v. —, 18 L J Ex 6	65
Clark's Patent, <i>In re</i> , 7 Moore P C (N S) 255	38, 39
—, L R 3 P C 421	38
Collard v. Allison, 4 Myl and C 487	69

TABLE OF CASES.

	PAGE
Compound Weighing and Advertising Co. v Automatic Weighing Machine Co., 58 L J Ch 709	80
Cook v. Pearce, 8 Q B 1044	23
— v. —, 13 L J Q B 189	23
— v. —, 8 Jur 499	23
Cornish v. Keene, 4 Scott 337	20
— v. —, 3 Beng (N C) 570	20
— v. —, 2 Hodges 281	20
— v. —, 6 L J C P 225	20
Cottula v. Soames, 3 F and F 93	66
Craig v. Dowding, 93 L T 231	77
— v. —, 25 Rep Pat Cas 259	77
— v. —, 24 T L R 248	77
Crane v. Price, 4 Man and G 586	16, 20
— v. —, 5 Scott (N R) 338	16, 20
— v. —, 12 L J C P 81 (225)	16, 20
— v. —, 1 Webb (P C) 303	10
Crosley v. Derby Gas Light Co., 1 Russ and M 166	54
— v. —, 3 Myl and Cr 428	72
— v. —, 3 Jur 692	72
Crossley v. Beverley, 9 B and C 63	22, 25
— v. —, 3 Car and P 513	22, 25
— v. —, M and M 283	22, 25
— v. —, (1829) 1 Russ and M 166	22, 25, 54
— v. —, 7 L J (O S) K B 127	22, 25
Currie and Timmis's Patent, <i>In re</i> , 67 L J P C 55	32
—, —, (1898) A C 673	32
—, —, 15 Rep Pat Cas 249	32
Curtis v. Cutts, 18 L J Ch 184	69
— v. —, 3 Jur 34	69
— v. Platt, 35 L J Ch 852	14, 58
— v. —, L R 1 H L 337	58
— v. —, 8 L T 657	61
— v. —, 11 L T (N S) 245	17
D	
Dangerfield v. Jones, 13 L T 142	15
Dansk, Reky Driffl Syndi Kas Aktieselskabet v. Snell, 2 Ch 127	67
Davenport v. Jenson, 1 N R 307	70
— v. Richard, 3 L T 503	69
Daw v. Eley, 13 L T 399	26
De Vitre v. Betts, 5 N R 165	72
— v. —, 31 W R 705	59
— v. —, L R 6 H L 319	59
Dickson v. London, 1 App Cas 632	52
Dismore, <i>In re</i> , 18 Beav 539	42
Doughlass v. Pintsch's Patent Lighting Co., 65 L J Ch 919	79
— v. —, 1 Ch 176	79
— v. —, 75 L T 332	79
— v. —, 45 W R 108	79
Driffield and East Riding Pure Linseed Cake Co. v. Waterloo Mills Cake and warehousing Co., 31 Ch D 638	78

TABLE OF CASES.

	PAGE
Driffield Linseed Cake Co. v. Waterloo Mills; combined Weighing Machine Cor, 55 L J Ch 391	... 78
Ducketts, Ltd. v. Whitehead, 12 R P C 187 (191)	... 55
Dudgeon v. Thompson, 3 App 34	42, 43, 58, 68
----- v. -----, 22 W R 464	... 68
----- v. -----, 30 L T 244	... 68
Dunlop Pneumatic Tyre Co. v. Moseley, 21 Rep Pat Cas 274	... 58
----- v. -----, 91 L T 40	... 58
----- v. -----, 1 Ch 612	... 58
----- v. -----, 73 L J Ch 417	... 58
----- v. -----, 20 T L R 314	... 58
----- v. -----, 52 W R 454	... 58
----- v. Neal, (1899) 1 Ch 807	... 54

E

Electric Telegraph Co. v. Bret, 15 Jur 579	... 15
----- v. -----, 20 L J C P 123	... 15
----- v. -----, 10 C B 838	... 15
----- v. Nott, 16 L J C P 174	... 62
----- v. -----, 11 Jur 590	... 62
----- v. -----, 4 C B 462	... 62
Ellam v. Martyn, 47 W R 212	... 79
----- v. -----, 15 T L R 107	... 79
----- v. -----, 16 Rep Pat Cas 28	... 79
----- v. -----, 79 L T 510	... 79
----- v. -----, 68 L J Ch 123 (C A)	... 78, 79
Elliot v. Turner, 15 L J C P 49 D	... 22
----- v. -----, 2 C B 446	... 72
Elwood v. Christy, 34 L J C P 130	... 72
----- v. -----, 18 C B (N S) 494	... 22
----- v. -----, 13 W R 498	... 72

F

Fisher v. Dewick, 4 Bing (N C) 706	... 62
----- v. -----, 6 Scott 587	... 62
----- v. -----, 6 D P C 739	... 63
----- v. -----, 1 Arn 282	... 62
----- v. -----, 7 L J C P 279	... 62
Fox, <i>Ex parte</i> , 1 Ves and B 67	... 19
Frearson v. Loe, 9 Ch D 48	... 18, 54
----- v. -----, 27 W R 183	... 18, 54

G

Gadd v. Manchester Corporation, 67 L T 569	... 15
Galloway's Patent, <i>In re</i> , 7 Jur 453	... 33, 37
Garrard v. Edge, 58 L J Ch 397	... 71
Geary v. Norton, 1 De G and Sm 9	... 53
Geipal's Patent, <i>In re</i> , 73 L J Ch 47	... 42, 44
-----, (1903) 2 Ch 715	... 44
-----, 73 L J Ch 215	... 42
-----, (1904) 1 Ch 289	... 42
-----, 52 W R 399	... 42

TABLE OF CASES.

	PAGE
Geipal's Patient, <i>In re</i> , 90 L T 70	... 42
Germ Milling Co. v. Robinson, 53 L T 696	... 70
----- v. -----, 55 L J Ch 287	... 70
----- v. -----, 34 W R 194	... 70
Gilbert v. Green, 10 L J Ex 124	... 73
----- v. -----, 9 D P C 219	... 73
----- v. -----, 7 M & W 347	... 73
Gillet v. Wilby, 9 Car and P 334.	... 64, 73
Goucher's Patent, <i>In re</i> , 2 Moor P C (N S) 532	... 34

H

Halsey v. Brotherhood, 30 W R 279	... 75
----- v. -----, 45 L T 640	... 75
----- v. -----, 19 Ch D 386	... 75
----- v. -----, 51 L J Ch 233	... 75
----- v. -----, 15 Ch D 514	... 75
----- v. -----, 49 L J Ch 786	... 75
----- v. -----, 43 L T 866	... 75
----- v. -----, 29 W R 9	... 75
Hancock v. Bewly, 1 Johns 601	... 81
----- v. Noyes, 23 L J Ex 110	... 66
----- v. -----, 9 Ex 388	... 66
----- v. -----, 2 C L R 1060	... 66
Hardy's Patent, <i>In re</i> , 6 Moore P C 441	... 36
-----, 13 Jur 177	... 36
Harrison v. Taylor, 5 Jur (N S) 1219	... 87
----- v. -----, 29 L J Ex 3	... 87
----- v. -----, 4 Harld N 815	... 87
Harwood v. G. N. Railway, 14 W R 1	... 17
----- v. -----, 12 L T 771	... 17
----- v. -----, 55 L J Q B 27	... 17
----- v. -----, 11 H L Cas 654	... 17
Haskell Golf Ball Co. v. Hutchinson, 21 Rep Pat Cas 497	... 80
----- v. -----, 20 T L R 603	... 80
Haslam Co. v. Hall, 5 Rep Pat Cas 127	... 73
Heath v. Smith, 18 Jur 601	... 21
----- v. -----, 23 L J Q B 166	... 21
----- v. -----, 3 El and Bl 256	... 21
----- v. -----, 2 W R 200	... 21
----- v. -----, 2 C L R 1584	... 21
----- v. Unwin, 6 Jur 1068	... 62
----- v. -----, 12 L J Ex 46	... 62
----- v. -----, 10 M & W 684	... 62
----- v. -----, 2 D (N S) 482	... 62
Health's v. Patent, 8 Moore P C 217	... 32
Henry's Patent, <i>In re</i> , 42 L J Ch 363	... 29
Herbert's Patent, <i>In re</i> , L R 1 P C 399	33, 34, 36
Higgs v. Goodwin, 4 Jur (N S) 258	... 60
----- v. -----, 27 L T Q B 421	... 16, 60
----- v. -----, El B and El 529	... 16, 60
----- v. -----, 5 Jur (N S) 97	... 16

TABLE OF CASES.

	PAGE
Hill v. Thompson, 17 R R 156	14, 52, 68
--- v. ---, 20 R R 488	.. 14
--- v. ---, 3 Mer 622 (629)	14, 52, 68
--- v. ---, Holt 636	.. 14
--- v. ---, 8 Taunt 375	.. 14
--- v. ---, 1 Webb P C 229	. 10
--- v. ---, 2 Moore 424	. 14
Hill's Patent, <i>In re</i> , 9 L T 101	. 38
-----, 9 Jur (N S) 1209	. 38
-----, 1 Moore P C (N S) 258	. 38
-----, 12 W R 25	. 38
Hills v. Evans, 6 L T 90	. 19
--- v. ---, 8 Jur (N S) 525	.. 19, 83
--- v. ---, 31 L J Ch 457	. 19, 83
--- v. ---, 4 De G F and J 288	19, 28, 83
--- v. ---, 6 L T 90	. 83
--- v. London Gaslight Co., 29 L J Ex 409	. 16, 83
--- v. ---, 5 Hand N 312	. 18, 83
Hinkes v. Safety Lighting Co., 46 L J C 185	. 26, 27
--- v. ---, 4 Ch D 607	. 25, 26
--- v. ---, 36 L T 391	. 26
Holdsworth v. M'Cron, 16 W R 226	. 88
--- v. ---, L R Q H L 380	. 88
--- v. ---, 36 L J Q B 297	. 88
--- v. ---, Post Col 531	. 87
Holste v. Robertson, 46 L J Ch 1	. 65
--- v. ---, 4 Ch D 9	. 65
Honiball's Patent, <i>In re</i> , 9 Moore P C 378	21, 37, 83
-----, 3 Eq R 225	. 37
Hopkinson v. St. James and Pall Mall Electric Light Co., 10 R P C 46	. 55, 56
Hornblower v. Boulton, 3 R R 439	. 19
--- v. ---, 8 Term Rep 95	. 19
--- v. ---, 3 R R 439	. 19
Hornby's Patent, 7 Moore P C 503	. 87
Horton v. Mabon, 6 L T 289	. 17
--- v. ---, 10 W R 502	. 17
--- v. ---, 31 L J C P 255	. 17
--- v. ---, 12 C B (N S) 437	. 17
Houghton's Patent, <i>In re</i> , L R 3 P C 461	. 38
-----, 7 Moore P C (N S), 309	. 38
Housebill Coal Co. v. Neilson, 9 Cl and F 788	. 20
Household v. Fairburn, 51 L T 498	. 76
----- and Rosher v. Fairburn and Hall, 2 R P C 140	. 78
Hull v. Bollard, 1 H and N 134	. 68
--- v. ---, 25 L J Ex 304	. 68

J

James, L R 8 Eq 367	57
Jandus Arc Lamp Co. v. Arc Lamps, Ltd., 22 Rep Pat Cas 277	45
----- v. ---, 92 L T 447	45
----- v. ---, 21 T L R 308	45

TABLE OF CASES.

	PAGE
Johnson v. Edge, 40 W R 437	79
----- v. -----, 66 L T 44	79
----- v. -----, 2 Ch 1	79
----- v. -----, 61 L J Ch 262	79
----- Patent, <i>In Re</i> , 99 L T 697	40
-----, (1909) 1 Ch 114	40
-----, 77 L J Ch 787	40
-----, L R 4 P C 75	37
-----, 24 T L R 889	40
-----, 25 Rep Pat Cas 709	40
Jones v. Berger, 12 L J C P 179	62
----- v. -----, 7 Jur 883	62
----- v. -----, 6 Scott (N R) 208	62
----- v. -----, 5 Man and G 208	62
Jordon v. Moore, 12 Jur (N S) 766	16
----- v. -----, L R I C P 624	16
----- v. -----, 14 W R 769	16
----- v. -----, 35 L J C P 268	16

K

Kay v. Marshall, 5 Jur 1028	18
----- v. -----, West 682	18
----- v. -----, S C 1 Boav 535	18
----- v. -----, 8 L J C P 261	18
----- v. -----, 2 Arn 78	18
----- v. -----, 7 Scott 548	18
----- v. -----, 5 Bing (N C) 492	18
Kaye v. Chubb and Sons, (1886) 4 R P C 23	55
Kelly v. Heathman, 39 W R 91	44
----- v. -----, 63 L T 517	44
----- v. -----, 45 Ch L D 256	44
----- v. -----, 60 L J Ch 22	44
Klabur and Steinberg Patent, <i>In re</i> 25 Rep Pat Cas 334	44
-----, 24 T L R 352	44
-----, 99 L T 87	41
-----, (1908) 1 Ch 847	44
-----, <i>In re</i> , 77 L J Ch 569	44
Kurtz v. Spence, 35 W R 26	76
----- v. -----, 55 L T 317	76
----- v. -----, 33 Ch D 579	76
----- v. -----, 55 L J Ch 919	76
----- v. -----, 58 L T 438	77, 79
----- v. -----, 57 L J Ch 239	79

L

Lake's Patent, <i>In re</i> , 60 L J P 57	39
-----, (1891) A C 240	39
Lane Fox v. Kensington Electric Light Co., 3 Ch 424	15
Leaf v. Tophan, 14 M & W 146	62
----- v. -----, 14 L J Ex 231	62
----- v. -----, 2 D & L 863	62
Leather Cloth Co. v. Hirschfield, 1 H & M 295	71

	PAGE
Ledsam v. Russell, 9 Jur 557	35
——— v. ———, 14 L J Ex 353	35
——— v. ———, 14 M and W 574	35
Lewis v. Davis, 3 Car & P 502	19
——— v. Marling, 10 B & C 22	13
Liardet v. Johnson Bull, N P 76	24
Lindsley, J. in Lane Fox v. Kensington &c. K. Electric Light Co., 2 Ch 428	11
Lord Westbury in Ralston v. Smith, 11 H L 246	12
Lovell v. Hicks, 2 Y and Coll 481	81
——— v. ———, 6 L J Ex Eq 85	81
Lowe's Patent, <i>In re</i> , 10 Jur 363	33
Lyon v. Goddard, (1893) 10 R P C 348 C A	55
——— v. Newcastle upon Tyne Corporation, (1894) 11 R P C 218	53
M	
Mc'Dougalls Patent, <i>In re</i> , 37 L J P C 17	32, 35
———, L R 2 P C 1	32
———, 5 Moore P C (N S) 1	32
Macnamara v. Hulse, Car & M 471	62
Markwick's Patent, <i>In re</i> , 13 Moore P C 310	32
Marsden v. Saville Street Foundry, 3 Ex D 203	14
Marwick's Patent, <i>In re</i> , 8 W R 333	32, 36
———, 13 Moore P C 310	33, 36
Mathers v. Green, 35 L J Ch 1	81
——— v. ———, 14 W R 17	81
——— v. ———, 13 L T 420	81
——— v. ———, 11 Jur (N S) 845	81
——— v. ———, L R 1 Ch 29	81
M'Crea v. Holdsworth, 19 W R 36	93
——— v. ———, L R 6 Ch 418	93
——— v. ———, 2 De G and S 496	94
——— v. ———, 12 Jur 820	94
——— v. ———, 23 L T 444	93
Meadows v. Kirkman, 29 L J Ex 205	70
Millengen v. Ebury, 9 Jur 714	93
——— v. Picken, 1 C B 799	93
——— v. ———, 14 L J C P 254	93
——— v. ———, 9 Jur 714	92
Milner's Patent, <i>In re</i> , 9 Moore P C 39	37
Minter v. Mover, 1 Webs R 138	56
——— v. Williams, 5 N & M 647	60
——— v. ———, 4 A & E 251	60
——— v. ———, 1 H & W 585	60
——— v. ———, 5 L J K B 60	60
Morgan v. Seward, 2 M and W 544	18, 82
——— v. ———, M and H 55	18, 82
——— v. ———, 6 L J Ex 153	18, 82
——— v. ———, 1 Jur 527	18, 82
Mullins v. Hart, 3 Car and K 297	21
Mulloney v. Stevens, 10 L T 190	87
Murray v. Clayton, 20 W R 649	18

	PAGE
Murray v. Clayton, L R 7 Ch 570	... 18
----- v. -----, L R 15 Eq 115	... 71

N

National-Opalite Glazed Brick and Tile Syndicate Co. v. Ceralite Syndicate, 18 R P C 649 (658)	... 55, 56
Neilson v. Betts, 40 L J Ch 317	... 23
----- v. -----, 19 W R 1121	... 23
----- v. -----, L R 5 H L 1	... 23
----- v. Harford, 11 L J Ex 20	... 62
----- v. -----, 8 M and W 806	... 23, 25, 62
----- v. -----, 11 L J Ex 20	... 23, 25
Newall and Elliot, <i>In re</i> , 4 Jur (N S) 562	... 82
-----, 27 L J C P 337	... 82
-----, 4 C B (N S) 269	... 82
Newsbery v. James, 16 R R 195	... 24
----- v. -----, 2 Mor 446	... 24
Newton's Patent, <i>In re</i> , 14 Moore P C 156	... 37
-----, 10 W R 731	... 37
Nickels v. Ross, 8 C B 679	... 20, 65
Normand's Patent, <i>In re</i> , 6 Moore P C (N S) 477	... 36
-----, L R 3 P C 193	... 36
North Eastern Marine Engineering Company v. Leeds Forge Company, (1906) 1 Ch 324	... 53
Norton v. Nicholas, 6 W R 764	... 94
----- v. -----, 4 Kay and J 475	... 94
Norton's Patent, <i>In Re</i> , 11 W R 720	... 34
-----, 1 Moore P C (N S) 339	... 34
-----, 9 Jur (N S) 419	... 34

O

Orpison v. Clark, 9 Jur (N S) 749	... 17
----- v. -----, 7 L T 361	... 18
----- v. -----, 11 W R 118	... 18
----- v. -----, 13 C B (N S) 337	... 17
Osmond v. Mutual Cycle and Manufacturing Supply Co, 2 Q B 483 C A	... 67
Otto v. Linford, 46 L T 35	... 14, 22
----- v. Steel, 9 R P C 109 (121) C A	... 55
Oxley v. Holden, 30 L J C P 68	... 60
----- v. -----, 2 L T 464	... 60
----- v. -----, 8 C B (N S) 666	... 60
----- v. -----, 8 W R 626	... 60

P

Palmer v. Wagt Staff, 8 Ex 840	... 62
----- v. -----, 1 W R 438	... 62
----- v. -----, 22 L J Ex 295	... 62
----- v. -----, 17 Jur 581	... 62
Parkes v. Stevens, 17 W R 846	... 24
----- v. -----, 18 W R 233	... 20
----- v. -----, 38 L J Ch 627	... 24
----- v. -----, L R 8 Eq 358	... 24, 57
----- v. -----, L R 5 Ch 36	... 20
----- v. -----, 22 L T 635	... 20

	PAGE
Parson's Patent, L J P C 55	32
———, 15 Rep Pat Cas 349	32
———, (1898) A C 673	32
Patent Type Founding Co. v. Richard, 1 Johnson 381	25
——— v. ———, 6 Jur (N S) 39	25
——— v. Walter, 5 H and N 192	70
——— v. ———, 29 L J Ex 207	70
——— v. ———, 6 Jur (N S) 103	70
——— v. ———, 1 L T 382	70
Patterson v. Gas Light Co. 3 App Cas 244	12
——— v. ——— and Coke Co., 38 L T 303	83
——— v. ———, 26 W R 482	83
——— v. ———, 3 App Cas 239	83
——— v. ———, 47 L J Ch 402	83
Patterson's Patent, <i>In re</i> , 13 Jur 593	34
———, 6 Moore P C 469	34
Penn v. Bibby, 36 L J Ch 455	15
—— v. Bibby, 15 L T 399	15
—— v. ———, 15 W R 208	15
—— v. ———, L R 2 Ch 127	15
—— v. Jack, L R 5 Eq 18	56
Piggot v. Anglo American Telegraph Co., 19 L T 46	71
Platt v. Elce, 8 Ex 364	65
—— v. ———, 22 L J Ex 192	65
—— v. ———, 16 Jur 188	65
Plimpton v. Malcolmson, 34 L T 340	24
—— v. ———, 3 Ch D 531	24
—— v. ———, 45 L J Ch 505	24
—— v. Spiller, 4 Ch D 286	68
—— v. ———, 47 L J Ch 211	29, 83
—— v. ———, 37 L T 56	83
—— v. ———, 25 W R 152	68
—— v. ———, 26 W R 285	83
—— v. ———, 6 Ch D 412	83
—— v. ———, 35 L T 656	68
Pneumatic Tyre Co. v. Tubeless Pneumatic Tyre and Capon Heaton. Ltd., 15 T L R 105	57
—— v. ———, 16 Rep Pat Cas 77	57
Poulton v. Adjustable Cover and Boil Stock Co., 2 C H 430	63
Powell v. Birmingham Vinegar Brewery Co., 14 Rep Pat Cas 1	71
Prancherdiere v. Elvery, 4 Ex 380	93
—— v. ———, 18 L J 331	93
Proctor v. Bayley, (1889) 42 Ch D 390 C A	53
—— v. ———, 4 R P C 333 (363)	55
—— v. ———, 36 Ch D 740	14
—— v. ———, 57 L J Ch 11	58
R	
Ralston v. Smith, 11 H L Cas 223	16
—— v. ———, 11 C B (N S) 471	42
—— v. ———, 13 L T J 1	16

	PAGE
Ralston v. Smith, 28 L J C P 49	16
— v. —, 20 C B (N S) 28	16
— v. —, 8 Jur (N S) 100	42
— v. —, 31 L J C P 102	42
Redmund, <i>In re</i> , 6 L J Ch 183	42
—, 5 Russ 44	42
Reg v. Cutter, 3 Car and K 215	16
— v. —, 14 O B 372	16
— v. Firman, 3 H and N 304 (n)	87
— v. —, 15 J P 570	87
Renard v. Levinstein, 11 L T 766	57
— v. —, 2 H and M 628	57
— v. —, 13 W R 382	57
— v. —, 10 L T 94	69
Rex v. Wheeler, 20 R R 465	23
— v. —, 2 B and Ald 345	23
Robertson v. Purdey, (1906) 2 Ch 615	53
Rogers v. Driver, 20 L J Q B 31	88
— v. —, 16 Q B 102	88
Rollins v. Hinks, L R 13 Eq 355	75
— v. —, 41 L J Ch 358	75
— v. —, 26 L T 56	75
— v. —, 20 W R 287	75
Russell v. Ledsam, 11 M & W 647	62
— v. —, 1 D & L 347	62
— v. —, 12 L J Ex 439	62
— v. —, 7 Jur 585	62
— Patent, <i>In re</i> , 2 Moore, P C 496	36, 40

S

Saccharin Corporation, Limited v. Anglo Continental Chemical, Works, 1 Ch 414	59, 73
— v. —, 17	
Rep Pat Cas 307	73
— v. —, 48 W	
R 444	73
— v. Chemicals and Drugs Company, 2 Ch 556 C	
A	71, 72
— v. —, 17 Rep Pat	
Cas 612	72
— v. —, 83 L T 206	72
— v. —, 69 L J Ch	
820	72
— v. —, 16 T L R	
564	72
— v. —, 9 W R 1	72
Saccharin Corporation, Ltd. v. Quincey, (1900) 2 Ch 246 (249)	54
— v. Wild, (1903) 1 C 410	53
Saunders v. Aston, 1 L J K B 265	19
— v. —, 3 B and A D 881	19
Savory v. Price, R and M 1	25
Saxby v. Glumes, 43 L J Ex 228	58

	PAGE
Saxby v. Easterbrook, 41 L J Ex 113	71
— v. —, 26 L T 39	71
— v. —, L R 7 Ex 207	71
— v. —, 20 W R 251	71
Saxby's Patent, <i>In re</i> , L R 3 P C 292	33, 38
—, 7 Moore P C (N S) 82	33, 38
—, 19 W R 513	33, 38
Sealy v. Browne, 9 Jur 537	66
— v. —, 14 L J Q B 169	66
Seed v. Higgins, 8 H L Cas 550	53
Sellers v. Dickenson, 20 L J Ex 417	20
— v. —, 5 Ex 312	20
Shaw v. Bank of England, 22 L J Ex 26	70
Sheffield's Patent, <i>Ex parte</i> , L R 8 Ch 237	28
—, 42 L J Ch 356	28
—, 21 W R 233	28
Sheriff v. Coates, 1 Russ and M 159	93
Siddell v. Vickers, 61 L T 233	72
Simister's Patent, <i>In re</i> , 4 Moore P C 164	34
—, 7 Jur 451	34
Simpson v. Holliday, 1 H L 315	22, 25
— v. —, 12 L T 99	22, 25
— v. —, 35 L J Ch 811	22, 25
— v. —, 13 W R 577	22
Singer Manufacturing Co. v. Wilson, 12 L T 140	70
— v. —, 5 N R 505	70
— v. —, 13 W R 560	70
Sirdar Rubber Co. v. Wallington, 97 L T 113	24
— v. —, 24 Rep Pat Cas 539	24
Skinner v. Shew, 1 Ch 413	78
— v. —, 62 L J Ch 196	78
— v. —, 2 R 179	78
— v. —, 67 L T 696	78
— v. —, 41 W R 217	78
Smith v. L. & N.W. Ry., 17 Jur 1071	57
— v. —, 2 El and B L 69	57
Smith's Patent, <i>In re</i> , 7 Moore P C 133	40
Southby's Patent, (1891) A C 432	33
Spence's Patent, <i>In re</i> , 7 W R 157	30
Stead v. Anderson, 11 Jur 877	64
— v. —, 16 L J O P 250	64
— v. —, 4 B C 806	64
Stockler v. Rodgers, 1 Car & K 99	73
Sturz v. De La Rue, 29 R R 24	52
— v. —, 7 L J (O S) Ch 47	52
— v. —, 5 Russ 322	52
Sykes v. Howarth, 48 L J Ch 769	58
— v. —, 12 Ch D 826	58
T	
Tatley v. Easton, 26 L J O P 269	16
— v. —, 2 O B (N S) 706	16

	PAGE
Thom v. Syddall, 26 L T 15	93
— v. —, 20 W R 291	93
Thomas v. Foxwell, 5 Jur (N S) 37	22
— v. —, 6 Jur (N S) 271	22
— v. Welch, 35 L J C P 200	43
— v. —, L R 1 C P 192	43
— v. —, 12 Jur (N S) 316	43
Thompson v. James, 32 Beav 570	17
— v. Moore, 23 L R Tr 599	14
Thompson's Patent, <i>In re</i> , 79 L J Ch 690	34
—, (1909) 2 Ch 447	34
—, 10 L T 527	34
—, 25 L T L R 786	34
—, 26 Rep Pat Cal 673	34
Thorn v. Worthing, Skating Rink Co., 6 Ch D 415 (n)	59
Thornycroft's Patent, 68 L J P C 68	35
—, (1899) A C 415	35
—, 16 Rep Pat Cas 202	35
Townsend v. Haworth, 48 L J Ch 770 (n)	58
— v. —, 12 Ch D 831 n	58
Trotman's Patent, <i>In re</i> , L R 1 P C 118	38

U

Union Electrical Power Light Co. v. Electrical Storage Co., 59 L T 427	77
— v. —, 36 W R 913	77
— v. —, 38 Ch D 325	77
United Telephone Co. v. Dale, 53 L J Ch 295	58
— v. —, 25 Ch D 778	58
— v. Patterson, 60 L T 315	74
— v. Sharples, 29 Ch C 164	52
Unuri v. Heath, 5 H L Cas 505	59

V

Van Berkel v. Booth, 1 Ir R 383	71
— v. —, 23 Rep Pat Cas 573	71
— Golder's Patent, <i>In re</i> , 76 L J P C 44	36
—, (1907) A C 174	36
—, 96 L T 333	36
—, 24 Rep Pat Cas 169	36
Von Hyden v. Nouda, 14 Ch D 230	52

W

Walker v. Clarke, 35 W R 245	77
— v. —, 56 L J Ch 239	77
— v. —, 56 L T 111	77
Wallington v. Dale, 23 L J Ex 49	43
— v. —, 7 Ex 888	43
Walter v. Lavater, 8 C B (N S) 162	72
Walton v. Bateman, 3 Man and G. 779	64, 65
— v. —, 4 Scott (N R) 397	64, 65
Wegmann v. Coreoran, 41 L T 358	27
— v. —, 18 Ch D 65	27

	PAGE
Welsbach Incandescent Gas Light Co. v. New Incandescent (Sunlight Patent) Gas Lighting Co., 48 W R 362	... 12
----- v. -----	
-----, 69 L J Ch. 343	... 12
----- v. -----	
-----, 17 Rep Pat Cas 237	... 12, 54
----- v. -----	
-----, 16 T L R 205	... 12
----- v. -----	
-----, 1 Ch. 843	... 12
----- v. -----	
-----, 82 L T 293	... 12
White v. Fenn, 15 L T 505	... 58
----- v. -----, 15 W R 348	... 58
Whitehouse's Patent, <i>In re</i> , 2 Moore P C 496	... 32, 36
Wield's Patent, <i>In re</i> , 8 Moore P C (N S) 300	... 39
-----, L R 4 P C 89	... 39
Wood v. Zimmer, 17 R R 605	... 25
----- v. -----, Holt 58	... 12, 25
Woodcroft's Patent, <i>In re</i> , 10 Jur 363	... 35
Wyatt v. Barnard, 3 Ves and B 77	... 25
----- v. -----, 13 R R 141	... 25
Y	
Yates and Kellett's Patent, <i>In re</i> , 12 App Cas 147	... 39
-----, 57 L J P O 1	... 39
Young v. Fernic, 12 W R 901	... 17, 19
----- v. -----, 10 L T 861	... 17, 19
----- v. -----, 10 Jur (N S) 926	... 17, 19
----- v. -----, 4 Giff 577	... 17, 19
----- v. White, 17 Boav 532	... 64
Z	
Zerrenner, <i>Ex parte</i> , 100 L T 809	... 13
-----, 25 L T 457	... 13
-----, 2 Ch 68	... 13
-----, 26 Rep Cas 228	... 13
-----, 78 L J Ch 403	... 13

THE INDIAN PATENTS AND DESIGNS ACT, 1911.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

A

Account, Patent S, 72.

Patent—Profits actually made, T, 72.

Patent—Profits—Mode of taking—Form of order, U, V, 72.
of profits—Disclosure of names of purchasers of goods, W, 72.

Act II of 1911—Necessity for the passing of this, A—L, 5—8.

Short title, extent and commencement, S. 1, 8.

“—Application of certain provisions of the, as to patents to designs, S. 51, 94.

Act XV of 1869, and Act V of 1888—“Make, sell or use”—Patent, infringement of—
Nature of exclusive privilege granted to patentee, X, 60, 61.

Ss. 4, 22 and 34—Measure of damages—Royalty—Infringement—Jurisdiction—
Detail of breaches, Y, 61.

Ss. 23, 34—Sui. for infringement of patent—Measure of damages—Ascertainment
of damages before decree, S, 56.

S. 24—Application by license under—Licensee and petitioner under Patent Act
having identical interest, N, 51.

Act V of 1888, Act XV of 1869 and, “Make, sell or use”—Article manufactured with-
out but sold within limits of exclusive privilege—Patent, infringement of—
Nature of exclusive privilege granted to patentee, X, 60, 61.

S. 14—Entry in register—Certified copies—Evidentiary value, I, J, 45.

S. 30—Respondent showing cause by affidavits—Issue directed to be tried—Onus
of proof at trial, M, 50.

Advocate-General, Meaning of, S. 2, 8.

Agency, Subscription and verification of certain documents, S, 75, 99, 100.

Application, etc., to controller, S. 76, 100, 101.

Amendment, of application or specification by Controller, S. 17, 41, 44.

of patent allowed in what cases, S—U, 42.

by way of correction or explanation—Validity of patent, E, 43, 44.

Patent—, or specification by the Court, S. 18, 44.

Appeal, Date for,—Design, A, 86.

Time for, reduced, Q, 99.

Controller, O, P, 98.

to the Governor-General in Council, S. 70, 98, 99.

Application, for registration of designs, S. 43, 84—88.

to register a design, V, 85.

Article, Meaning of, S. 2, 8.

Patent—Infringement—Article manufactured out of the infringing article, P, 59.

Assessor, Patent action—Hearing with, S. 35, 74.

Assign, Meaning, Q, R, 14.

Assignee, Patent, extension of, when refused to, J, 36.

Petition by, of patent—Inventor dead—No special merit—Patent—Extension, *K, 36.*

Assignments, Entry of and transmissions in registers of designs, S. 63, 96.

B

Breaches, Particulars of—Suit for compensation or infringement of patent, N, 63.

British India, Revocation of patents worked outside, S. 23, 47–49.

British Indian Waters, Foreign vessels in, S. 42, 84.

Burden of proof, Opposition to grant of patent—Onus, T, 28.

Action to restrain threats of legal proceedings—Validity of patent, *P, 77.*

C

Certificate, of validity questioned and costs thereon, S. 32, 72–74.

Solicitor and client—Costs—Validity of patent questioned in previous action, *A, 73.*

Validity of patents established in previous actions—Costs, *B, 73.*

“ when given—Patent, *X, Y, 73.*

that validity of patent had come in question—Patent, *Z, 73.*

that particulars of objections are reasonable—Costs—Patent, *C, 74.*

of registration, *S. 45, 88.*

of controller to be evidence, *S. 71, 99.*

Certified copies, Entry in register—Evidentiary value, I, J, 45.

Compensation, Suit for, for infringement of patent—Particulars of breaches, N, 63.

Controller, Patent—Proceedings upon application, S. 5, 26, 27.

Patent—Advertisement on acceptance of application, *S. 6, 27.*

Inquiry before sealing patent, *S. 8, 28.*

Amendment of application or specification by, *S. 17, 41–44.*

Presence of—Costs of—Patent, Disclaimer, *P, U, 44.*

Power of, to revoke surrendered patent, *S. 21, 49.*

Transmission of decrees and orders to the, *S. 33, 74.*

Decision of—Design, *Z, 86.*

Privilege of reports of, *S. 60, 95.*

Power for, to correct clerical errors, *S. 62, 96.*

Powers of, in proceedings under Act, *S. 65, 97.*

Publication of patented inventions, *S. 66, 97.*

Exercise of discretionary power by, *S. 67, 97.*

Power of, to take directions of Governor-General in Council, *S. 68, 98.*

Refusal to grant patent, etc., in certain cases, *S. 69, 98.*

Appeals, *O, P, 98.*

Appeals to the Governor-General in Council, *S. 70, 98, 99.*

Certificate of, to be evidence, *S. 71, 99.*

Transmission of certified printed copies of specifications, etc., *S. 72, 99.*

Application and notices by post, *S. 73, 99.*

Application, etc., to—Agency, *S. 76, 100, 101.*

Conversion, of an exclusive privilege into a patent, W--Y, 102.

Copies, and specimens of designs, W, 83, 86.

Transmission of certified printed, of specifications, etc., *S. 72, 99.*

Copyright, Meaning, S. 2, 9.

Patent—Specification, *I, 25.*

Design, on registration, *S. 47, 89.*

Extension of period of, in registered design, *IV, 89.*

Effect of disclosure on, *S. 49, 90.*

Information as to existence of, *S. 51, 91.*

Costs, of opposition—Patent, *N*, **O**, **37**.

Patent—Abandoned petition for extension, *P*, *Q*, **37**.

of introduction—Patent—Extension, *T*, **37**.

of Comptroller—Patent—Disclaimer—Presence of Comptroller, *F*, *G*, **44**.

Certificate of validity questioned and, thereon, *S* **32**, **72–74**.

Validity of patent questioned in previous action—Certificate—Solicitor and client, *A*, **73**.

Certificate—Validity of patents established in previous actions, *B*, **73**, **74**.

Patent—Certificate that particulars of objections are reasonable, *C*, **74**.

Patent—Threat—Right of action, *E*, **80**.

Crown, Patent to bind, *S*, **21**, **45**, **46**.

Saving for prerogative, *S*, **79**, **102**.

D

Damages, Restriction on recovery of—Patent, *S*, **19**, **44**, **45**.

Patent—Infringement—General principles, *O–R*, **56**.

Measure of—Ascertainment of, before decree—Suit for infringement of patent, *S*, **56**.

Measure of—Royalty—Infringement—Jurisdiction—Detail of breaches—Act XV of 1859, *Ss.* **4**, **22** and **34**, *Y*, **61**

Exemption of innocent infringer from liability for, *S*, **30**, **67**.

Declaration, by infant, lunatic, etc., *S*, **74**, **99**.

Decrees, Transmission of, and orders to the Controller—Patent, *S*, **33**, **74**.

Definitions of Advocate-General, *S*, **2**, **8–13**.

“Article” *S* **2**, **8–13**.

„Controller, *S*, **2**, **8–13**.

Copyright, *S*, **2**, **8–13**.

Design, *S*, **2**, **8–13**.

District Court, *S*, **2**, **8–13**.

High Court, *S*, **2**, **8–13**.

Invention, *S*, **2**, **8–13**.

Legal representative, *S*, **2**, **8–13**.

Manufacture, *S*, **2**, **8–13**.

Patent, *S*, **2**, **8–13**.

Patentee, *S*, **2**, **8–13**.

Prescribed, *S*, **2**, **8–13**.

Proprietor, *S*, **2**, **8–13**.

Design, Meaning, *S*, **2**, **9**.

Application for registration of, *S*, **43**, **84–88**.

Classification of goods, *U*, **85**.

Application to register a, *V*, **85**.

Copies and specimens of, *W*, **85**, **86**.

Date for appeal, *A*, **86**.

Non-completion of, within six months, *B*, **86**.

Application by whom made, *D–F*, **86**.

Registration, application for—Acceptance, *X*, **86**.

Application for registration—Objections, *Y*, **86**.

Decision of controller, *Z*, **86**.

New and original Registration, *G*, *H*, **87**.

Perforated picture casting a shadow—Registration, *I*, **87**.

Combinations Registration *J–N*, **87**.

How made—Registration, *O*, **87**.

- Registration of, in new classes, S. 44, 88.
 Certificate of registration, S. 45, 88.
 Bricks—Registration, P, 88.
 Marks—Registration, Q, 88.
 Mode of description—Combination—Registration, R, 88.
 Registration with particular thing, S, 88.
 Nature—Publication, T, U, 88.
 Sending, to person who is not in any confidential relation to proprietor, V, 88.
 Register of, S. 46, 89.
 Copyright on registration, S. 47, 89.
 Extension of period of copyright in registered, W, 89.
 Requirements before delivery on sale, S. 48, 89, 90.
 Effect of disclosure on copyright, S. 49, 90.
 Marking of articles before delivery on sale, X, 90.
 Inspection of registered, S. 50, 90, 91.
 Information as to existence of copyright, S. 51, 91.
 Inspection of, Y, 91.
 Request for information, Z, 91.
 Provisions as to exhibitions, S. 52, 91, 92.
 Piracy of registered, S. 53, 92—94.
 Publication no waiver—Infringement, D, 93.
 Infringement, E, 93.
 Pleading—Infringement, E, 93.
 No infringement, H—C, 93.
 Infringement—Defendants' right to trial at law—Effect of delay, F, G, 93, 94.
 Application of certain provisions of the Act as to patents to, S. 54, 94.
 Fraudulent imitation—What is, H, I, 94.
 Sale and manufacture—Infringement—Injunction, J, 94.
 Fees, S. 57, 95.
Disclaimer, Principles, W, 42.
 Effect, X, Y, 42, 43.
 Construction, A, 43.
 Explanation by, B, C, 43.
 Verbal alteration by, D, 43.
 On assignment, Z, 43.
 Presence of Comptroller—Costs of Comptroller, F, G, 44.
Disclosure, Effect of, on copyright, S. 49, 90.
District, defined, M, 10.
 Meaning, V, 57.
District Court, Meaning, S. 2, 9 V, 57.
Documents, Subscription and verification of certain, S. 75, 99, 100.
 Signature and verification of, specified in S. 75 of the Act, R, 100.
Drawings, Patent—When, may be called in aid, M—O, 26.
 Not properly explained, etc.,—Patent—Specification, S. 27.
 Prohibition of publication of specification, drawings, etc., where application abandoned, etc., S. 61, 95, 96.
Due diligence, Patent—Threat—, in instituting action, C, 80.
 Patent—Threat—Prosecuting action with, D, 80.
- E**
- Entry*, of assignments and transmissions in registers if designs, S. 63, 96.
Estoppel, Patent—Action for infringement—Judgment, Revocation pending inquiry, M, 63.

Evidence, Specification, *L*, 23.

Entry in register—Certified copies—Evidentiary value, *I*, *J*, 45.

Infringement of patent, *T—Z*, 52, 53.

Certificate of Controller to be, *S*, 71, 99.

Exclusive privilege, Conversion of an, into a patent, *W—Y*, 102.

Exhibitions, Provisions as to, *S*, 40, 83, 84; *S*, 52, 91, 92.

Extension, of term of patent, *S*, 15, 31, 40.

Grounds for, Patent, *D—F*, 32.

of patent—Expensive litigation the patentee had been put to, *H*, 32.

Loss by patentee, *I*, 32.

No profit, coupled with evidence of utility, *J*, 33.

Subject to condition, *K*, 33.

Non-user satisfactorily accounted for, *L*, *M*, 33.

Question as to validity, *N—P*, 33.

Power to grant second, *Q*, 33, 34.

Grounds of refusal of, *R*, *S*, 34.

Non-user, when fatal, *T—W*, 34.

Question as to validity, *A*, *B*, 35.

Prolongation refused—Loss through want of business capacity, *C*, 35.

Principles—, of term of patent granted, *D*, 35.

Subject-matter not sufficient to sustain patent, *X*, *Y*, 35.

Patent article unprofitable—, refused, *Z*, 35.

For benefit of patentee, *E—I*, 36.

When refused to assignee, *J*, 36.

Petition by assignee of patent—Inventor dead—No special merit, *K*, 36.

Opposition encouraged, *L*, 37.

Objections to, of time, *M*, 37.

Abandoned petition for,—Patent—Costs, *P*, *Q*, 37.

Profits—Deductions, *S*, 37.

Cost of introduction, *T*, 37.

Account of profits—Nature and extent, *B—D*, 38.

Account of profits—Must be full and accurate, *W—A*, 38.

Accounts not full and accurate, *E—G*, 39.

Insufficiency of accounts, *H*, *I*, 39.

Accounts of receipts not filed, *J*, 39.

Value of disclosures—Adequacy of patentee's remuneration—Duty of petitioner,
K, *L*, 39, 40.

Inadequate remuneration, *M—P*, 40.

of period of copyright in registered design, *W*, 39.

F

Foreign vessels, in British Indian waters, *S*, 42, 84.

G

Goods, Classification of, *U*, 85.

Governor-General in Council, Power of Controller to take directions, *S*, 68, 98.

Appeals to the, *S*, 70, 98, 99.

Power for, to make rules, *S*, 77, 101.

Grant, and sealing of patent, *S*, 10, 29, 30.

H

Hearing, Patent action—, with assessor, *S*, 35, 74.

High Court, Meaning, S. 2, 9, N, 10.

Framing issue for trial before other Courts, S. 28, 51.

Power of, to stay proceedings, etc., S. 34, 74.

Rectification of register by Court, S. 64, 97.

I

India, Patent Law in, I, 12.

Indian Museum, Models to be furnished to, S. 41, 84.

Infant, Declaration by, lunatic, etc., S. 74, 99.

Information, as to existence of copyright, S. 51, 91.

Request for, Z, 91.

Infringement, Suits for, of patents, S. 29, 51—67.

Patent, O—S, 52.

of patent—Evidence, T—Z, 52, 53.

Leave to withdraw action for, of patent, on what terms allowed, A, 53.

Injunction—General principles, C, 53.

Protection of patent rights—Patent, D, E, 53, 54.

Protection before—Injunction, F, G, 54.

Suspending the injunction pending an appeal, J—N, 55, 56.

Suit for, of patent—Measure of damages—Ascertainment of damages before decree, S, 56.

Who may sue, T, U, 57.

Application of known principles, W, 57.

of one of several parts, X—A, 57.

Sale of component parts of infringing machine, B, 57, 58.

Manufacture and sale of compound part of a combination Patent, C, 58.

of combination—Patent, D—G, 58.

of patent—Distinct object, H, I, 58.

Different process with same elements, J—N, 53, 59.

Colorable imitation, O, 59.

by workmen—Patent, Q, R, 59.

What is user of patent, S—U, 60.

User not for purposes of profits whether,—Patent, Y, 60.

Patent—Nature of exclusive privilege granted to patentee—Act XV of 1859 and Act V of 1889—"Make, sell or use"—Exclusive; privilege acquired for process of producing certain article—Article manufactured without but sold within limits of exclusive privilege—"Town and station of Rawalpindi," X, 60, 61.

Jurisdiction—Detail of breaches—Act XV of 1859, Ss. 4, 22 and 34—Measure of damages—Royalty, Y, 61.

of patent—Objection—Principles, Z, A, 61.

Objection—Sufficiency, B—L, 62, 63.

Action for—Judgment—Revocation pending inquiry—Estoppel, M, 63.

Suit for compensation for—Particulars of breaches, N, 63.

Particulars of required to be given under, O, 63.

Certain defences to an action barred—Intention of legislature, P, 63, 64.

Pleadings generally, Q—V, 64.

Pleadings allowed, W—D, 64, 65.

Pleadings disallowed, E—L, 65, 66.

Damages—General principles, O—R, 66.

Exemption of innocent infringer from liability for damages, 30, 67.

Injunction—General principles, O—Q, 68.

Interim injunction—When granted, R—Y, 68; 69.

Interim injunction—When refused, Z—E, 69, 70.

Infringement—(Concluded).

Where action for, commenced, *F*, 81.

No,—Design, *H—C*, 93.

Design—Publication no waiver, *D*, 93.

of design, *E*, 93.

Pleading, *E*, 93.

Defendant's right to trial at law—Effect of delay, *F*, *G*, 93, 94.

Sale and manufacture—Injunction, *J*, 94.

Injunction, General principles—Patent—Infringement, *C*, 53.

Protection of patent rights—Patent—Infringement, *D*, *E*, 53, 54.

Patent—Protection before infringement, *F*, *G*, 54.

When patent has expired, *H*, 54.

Patent—Trade-name—Similarity—"Likely to deceive"—Descriptive or fancy name—Secondary meaning—Injunction, *K*, 54, 55.

Suspending the, pending an appeal—Patent—Infringement, *L—N*, 55, 56.

Patent—Infringement—General principles, *O—Q*, 68.

Interim—When granted—Patent—Infringement, *R—Y*, 68, 69.

Interim—When refused—Patent—Infringement, *Z—E*, 69, 70.

Patent—Balance of convenience and inconvenience, *R*, *S*, 77.

to restrain threats—Threats of proceedings by persons other than person enjoined—Breach of injunction—Patent, *Z, A*, 79.

Design—Sale and manufacture—Infringement, *J*, 94.

Inspection, Patent cases, *F*, 70.

of machines sold—Patent cases, *G*, 70.

of process carried on under patent—Patent cases, *H*, 70.

Grounds of application for order for,—patent cases, *I—N*, 70, 71.

Application for, of machines relied on as anticipating plaintiff's patent, *O*, 71.

of books—After verdict, *R*, 71.

of registered designs: *S*. 50, 90, 91.

of designs, *Y*, 91.

of, and extracts from registers of designs, *S*. 59, 95.

Invention, Meaning, *S*. 2, 9, *O—U*, 10.

New manufacture, *V*, 10.

and discovery, *W*, 10, 11.

must be new and useful—Patent, *S*, 14.

Results of mechanism—Improved result—Patent, *T*, 14.

already known in part—Patent, *D—G*, 16, 19.

Where part of, new but immaterial—Patent, *K*, 19.

Examples of patentable—Patent, *I—S*, 19, 20.

Use of, on acceptance of application—Patent, *S*. 7, 27, 28.

Novelty of, *S*. 38, 81—83.

Inventor, First and original, *T*, 83.**L***Legal Practitioner*, Addition of the words—Effect, *U*, 101.*Legal proceedings*, Remedy in case of groundless threats of, *S*. 36, 74, 81.

Piracy of registered design, *S*. 53, 92—94.

Legal representative, Meaning, *S*. 2, 9, *A*, 11.

Meaning extended by judicial decisions, *B*, 11.

English Law, *X—Z*, 11.

Lunatic, Declaration by, etc., *S*. 74, 99.

M

Manufacture, Meaning, S. 2, 9.

Process, C—H, 11, 12.

and sale of component part of a combination patent Infringement, C, 58.

Models, to be furnished to Indian Museum, S. 41, 84.

N

Notice, of proceedings to persons interested—Petition for revocation, S. 27, 51.
of trust not to be entered in registers, S. 58, 95.

O

Objections, to patent—Particulars of, Q, 77.

Offences, Wrongful use of words "Patent Office", S. 78, 101, 102.

Opposition, to grant of patent—*Onus*, S. 9, 28, 29, T, 28.

Encouraged—Patent—Extension, L, 37.

Costs of—Patent, N, O, 37.

P

Patent, Meaning, S. 2, 9.

Definition, 12.

Requisites of valid, I—L, 12, 13.

Application, S. 9, 13 - 21.

True and first inventor, O, P, 14.

Inventions must be new and useful, S, 14.

Invention—Results of mechanism—Improved result, T, 14.

New principle with novel application, U, 14.

Old principle, novel application of, V—C, 14, 15.

Invention already known in part, D - G, 16—19.

Useful application of known unproductive article, H—J, 19.

Where part of invention new but immaterial, K, 19.

Examples of patentable invention, L—S, 19, 20.

New combination, T, 20.

Prior publication and user by patentee, U—C, 20, 21.

Specification, S. 4, 21—26.

Specification—Method of construction, D—I, 22.

Construction, J, K, 22.

Nature, M, 23.

must not be inconsistent with the specification, N—Q, 23.

Objection to form of, R, 23.

Sufficiency—Disclosure, S, T, 23.

Test of sufficiency, U—Y, 24.

Sufficiency of, Z, 24.

Must not be ambiguous, A—C, 24, 25.

Misleading, D—F, 25.

Omitting essential matters, G—K, 25.

Copyright, L, 25.

When drawings may be called in aid, M—O, 26.

Proceedings upon application, S. 5, 26, 27.

Advertisement on acceptance of application, S. 6, 27.

Methods, P, 27.

Descriptions of genus, not species, Q, 27.

Sufficient description, R, 27.

Drawings not properly explained, etc., S, 27.

Use of invention on acceptance of application, S. 7, 27, 28.

Patent—(Continued).

- Inquiry before sealing, S. 8, 28.
- Opposition to grant of, S. 9, 28, 29.
- Onus, T, 28.
- Nature of public knowledge, U—Y, 28, 29.
- Objection for want of novelty, Z, 29.
- Grant and sealing of, S. 10, 29, 30.
- Date of, S. 11, 30.
- Effect, extent and form of, S. 12, 30.
- Fraudulent applications for, S. 13, 30.
- Opposing to sealing, A, 30.
- Term of, S. 14, 31.
- Extension of term of, S. 15, 31—40.
- Grounds for, D—F, 32.
- of great merit, G, 32.
- Expensive litigation the patentee had been put to, H, 32.
- Loss by patentee, L, 32.
- No profit, coupled with evidence of utility, J, 33.
- Subject to condition, K, 33.
- Non-user satisfactorily accounted for, L, M, 33.
- Question as to validity, N—P, 33.
- Power to grant second, Q, 33, 34.
- Grounds of refusal of, R, S, 34.
- Non-user, when fatal, T—W, 34.
- Question as to validity, A, B, 35.
- Prolongation refused—Loss through want of business capacity, C, 35.
- Principles, D, 35.
- Subject-matter not sufficient to sustain, X, Y, 35.
- Article unprofitable—Extension refused, Z, 35.
- For benefit of patentee, E—I, 36.
- When refused to assignee, J, 36.
- Petition by assignee of patent—Inventor dead—No special merit, K, 36.
- Opposition encouraged, L, 37.
- Objection to extension of time, M, 37.
- Costs of opposition, N, O, 37.
- Costs—Abandoned petition for extension, P, Q, 37.
- Profits—Deductions, S, 37.
- Costs of introduction, T, 37.
- Manufacture, U, 37.
- Account of profits—Must be full and accurate, W—A, 38.
- Account of profits—Nature and extent, B—D, 38.
- Accounts not full and accurate, E—G, 39.
- Insufficiency of account, H, I, 39.
- Accounts of receipts not filed, J, 39.
- Value of disclosures—Adequacy of patentee's remuneration—Duty of petitioner, K, L, 39, 40.
- Inadequate remuneration, M—P, 40.
- Restoration of lapsed, S. 16, 40, 41.
- Amendment of application or specification by Controller, S. 17, 41—44.
- Amendment, in what cases, S—U, 42.
- Disclaimer—Principles, W, 42.
- Effect, X, Y, 42, 43.

Patent—(Continued).

—Construction, *A*, 43.

Explanation by, *B*, *C*, 43.

Verbal alteration by, *D*, 43.

On assignment, *Z*, 43.

Validity of—Amendment by way of correction or explanation, *B*, 43, 44.

Amendment of specification by the Court, *S*, 18, 44.

Disclaimer—Presence of Controller—Costs of Controller, *F*, *G*, 44.

Restriction on recovery of damages, *S*, 19, 44, 45.

Register of, *S*, 20, 45.

Original claim framed in good faith and with reasonable skill and knowledge, *H*, 45.

to bind Crown, *S*, 21, 45, 46.

Compulsory licenses and revocation, *S*, 22, 45, 47.

Revocation of, worked outside British India, *S*, 23, 47, 49.

Power of Controller to revoke surrendered, *S*, 24, 49.

Revocation of, on public grounds, *S*, 25, 49.

Petition for revocation of, *S*, 26, 49—51.

Act V of 1888, *S*, 30—Respondent showing cause by affidavits—Issue directed to be tried—Onus of proof at trial, *M*, 50.

Petition for revocation—Notice of proceedings to persons interested, *J*, 27, 51.

Framing issue for trial before other Courts, *S*, 28, 51.

Application by licensee under—Licensee and petitioner under Patent Act having identical interest, *N*, 51.

Suits for infringement of, *S*, 29, 51—57.

Infringement of, *O*—*S*, 52.

Evidence, *T*—*Z*, 52, 53.

Leave to withdraw action for, on what terms allowed, *A*, 53.

When no action lies, *B*, 53.

Infringement—Injunction—General principles, *C*, 53.

Injunction—Protection of rights, *D*, *E*, 53, 54.

Protection before infringement—Injunction, *F*, *G*, 54.

Injunction when, has expired, *H*, 54.

Perpetual injunction refused, *I*, *J*, 54.

Trade name—Similarity—"Likely to deceive"—Descriptive or fancy name—Secondary meaning—Injunction, *K*, 54, 55.

Suspending the injunction pending an appeal, *L*—*N*, 55, 56.

Damages—General principles, *O*—*R*, 56.

Suit for—Measure of damages—Ascertainment of damages before decree, *S*, 56.

Who may sue, *T*, *U*, 57.

Application of known principles, *W*, 57.

of one of several parts, *X*—*A*, 57.

Sale of component parts of infringing machine, *B*, 57, 58.

Manufacture and sale of component part of a combination, *C*, 58.

of combination, *D*—*G*, 58.

Distinct object, *H*, *I*, 58.

Different process with same elements, *J*—*N*, 58, 59.

Colorable imitation, *O*, 59.

Article manufactured out of the infringing article, *P*, 59.

by workmen, *Q*, *R*, 59.

What is user of, *S*—*U*, 60.

User not for purposes of profit whether, *V*, 60.

Patent—(Continued).

Exercise and vend, *W*, 60.

Nature of exclusive privilege granted to patentee—Act XV of 1859 and Act V of 1888—"Make, sell or use"—Exclusive privilege acquired for process of producing certain article—Article manufactured without but sold within limits of exclusive privilege "Town and station of Rawalpindi," *X*, 60, 61.

Objection—Principles, *Z*, *A*, 61.

Objection—Sufficiency, *B*—*L*, 62, 63.

Action for—Judgment—Revocation pending inquiry—Estoppel, *M*, 63.

Suit for compensation for—Particulars of breaches, *N*, 63.

Particulars of infringement required to be given under, *O*, 63.

Certain defences to an action barred—Intention of legislature, *P*, 63, 64.

Pleadings—Generally, *Q*—*V*, 64.

Pleadings allowed, *W*—*D*, 64, 65.

Pleadings disallowed, *E*—*L*, 65, 66.

action—Shorthand notes—Payment by solicitor—Solicitor's right to recover from client—Practice, *M*, 66, 67.

Exemption of innocent infringer from liability for damages, *S*, 30, 67.

Sale for £5,000 and royalties—Vendor's lien in respect of unpaid royalties, *N*, 67.

Infringement—Injunction—General principles, *O*—*Q*, 68.

Interim injunction—When granted, *R*—*Y*, 68, 69.

Interim injunction—When refused, *Z*—*F*, 69, 70.

cases—Inspection, *F*, 70.

cases—Inspection of machines sold, *G*, 70.

cases—Inspection—Of process carried on under patent, *H*, 70.

cases—Grounds of application for order for inspection, *I*—*N*, 70, 71.

Application for inspection of machines relied on as anticipating plaintiff's, *O*, 71.

Account of profits—Disclosure of purchasers—Practice, *P*, *Q*, 71.

Inspection of Books—After verdict, *R*, 71.

Account—General, *S*, 72.

Profits actually made, *T*, 72.

Profits—Mode of taking account—Form of order, *U*, *V*, 72.

Account of profits—Disclosure of names of purchasers of goods, *W*, 72.

Certificate of validity questioned and costs thereon, *S*, 32, 72—74.

Validity of, questioned in previous action—Certificate—Solicitor and client—Costs, *A*, 73.

Certificate when given, *X*, *Y*, 73.

Certificate that validity of patent had come in question, *Z*, 73.

Validity of, established in previous actions—Costs—Certificate, *B*, 73, 74.

Transmission of decrees and orders to the controller, *S*, 33, 74.

Action—Hearing with assessor, *S*, 35, 74.

Certificate that particulars of objections are reasonable—Costs, *C*, 74.

Remedy in case of groundless threats of legal proceedings, *S*, 36, 74—81.

Restraining threats generally, *D*—*K*, 75, 76.

action—Proof of validity of, *L*—*Q*, 76, 77.

Validity of—Burden of proof—Action to restrain threats of legal proceedings, *P*, 77.

Objections to, —Particulars of objection, *Q*, 77.

Injunction—Balance of convenience and inconvenience, *R*, *S*, 77.

Threats action, *T*, *U*, 78.

Threats by circulars, advertisements or otherwise—Private letter, *V*, 78.

Patent—(Concluded).

Threats contained in letters in answer to inquiries—Privileged communications, *W*, 78.

Threats, what are—"Without prejudice," *Y*, 78, 79.

Threat—Letter—No reference to, 79.

Injunction to restrain threats—Threats of proceedings by persons other than person enjoined—Breach of injunction, *Z*, *A*, 79.

Circulars issued in general terms—"Person aggrieved," *B*, 79.

Due diligence in instituting action, *C*, 80.

Prosecuting action with due diligence, *D*, 80.

Right of action—Costs, *E*, 80.

Grant of, to two or more persons, *S*, 37, 81.

Where action for infringement commenced, *F*, 81.

Grant of, to two or more persons jointly—Effect, *G*—*I*, 81.

Novelty of invention, *S*, 38, 81—83.

Prior publication and user, *J*—*M*, 82, 83.

Loss or destruction of, *S*, 39, 83.

Nature of public knowledge, *N*—*Q*, 83.

Knowledge of patentee, *R*, *S*, 83.

First and original inventor, *T*, 83.

Provisions as to exhibitions, *S*, 40, 83, 84.

Models to be furnished to Indian Museum, *S*, 41, 84.

Foreign vessels in British Indian waters, *S*, 42, 84.

Application of certain provisions of the Act as to, to designs, *S*, 54, 94.

Fees, *S*, 57, 95.

Prohibition of publication of specification, drawings, etc., where application abandoned, etc., *S*, 61, 95, 96.

Power for Controller to correct clerical errors, *S*, 62, 96.

Entry of assignments and transmissions in registers, *S*, 63, 96.

Refusal to grant, etc., in certain cases, *S*, 69, 96.

Saving for prerogative of Crown, *S*, 79, 102.

Substitution of, for rights under repealed Act, *S*, 81, 102.

Conversion of an exclusive privilege into a, *W*—*Y*, 102.

Patentee, Meaning, *S*, 2, 9.

Who is a, *M*, 13.

Duty of, *N*, 13.

Expensive litigation the, had been put to—Patent—Extension, *H*, 32.

Patent—Extension—Loss by, *I*, 32.

For benefit of,—Extension, *E*—*I*, 36.

Knowledge of, *R*, *S*, 83.

Patent office, Provision regarding, *S*, 55, 94, 95.

Officers and clerks, *S*, 56, 95.

Wrongful use of words, *S*, 78, 101, 102.

Patents and Designs Rules, 1912. See APPENDIX.

Perpetual injunction, refused—Patent, *I*, *J*, 54.

Person aggrieved, Patent—Circulars issued in general terms, *B*, 79.

Petition, for revocation of patent, *S*, 26, 49, 51.

Piracy, of registered design, *S*, 53, 92—94.

Pleadings, generally—Patent—Infringement, *Q*—*V*, 64.

allowed—Patent—Infringement, *W*—*D*, 64, 65.

disallowed—Patent—Infringement, *E*—*L*, 65, 66.

Infringement of design, *E*, 93.

Post, Application and notices by, S. 73, 99.

Practice, Patent action—Shorthand notes—Payment by solicitor—Solicitor's right to recover from client, M, 66, 67.

Patent—Account of profits—Disclosure of purchasers, P, Q, 71.

Prescribed, Meaning, S. 2, 9.

Privilege, of reports of controller, S. 60, 95.

Profits, Patent—Extension—Deductions, S. 37.

Account of—Nature and extent—Extension of patent, B—D, 38.

Actually made—Patent, T, 72.

Patent—Account—Mode of taking account—Form of order, U, V, 72.

Account of,—Disclosure of names of purchasers of goods—Patent—Accounts, W, 72.

Proprietor, of new and original design—Meaning, S. 2, 9.

Of design—Definition, C, 86.

Sending design to person in non-confidential relation to, V, 88.

Publication, Design—no waiver—Infringement—D, 93.

Prohibition of, of specification, drawings, etc., where application abandoned, etc., S. 61, 95, 96.

Public knowledge, Nature of, —Patent, N—Q, 83.

R

Rectification, of register by Court, S. 64, 97.

of the register, M, 97.

Register, of Patents, S. 20, 45.

of designs, S. 46, 89.

Notice of trust not to be entered in, S. 58, 95.

Inspection of, and extracts from of designs, S. 59, 95.

Power for Controller to correct clerical errors, S. 62, 96.

Entry of assignments and transmissions in, of designs, S. 63, 96.

Rectification of, by Court, S. 64, 97.

Rectification of the, M, 97.

Registration, Application for, of designs, S. 43, 84, 88.

Application to register a design, V, 85.

Copies and specimens of designs, W, 85, 86.

Application for—Acceptance—Design, X, 86.

application for—Objections—Design, Y, 86.

New and original design, G, H, 87.

Design—Combinations, J—N, 87.

How made, O, 87.

of designs in new classes, S. 44, 88.

Certificate of, S. 45, 88.

Design—Bricks, P, 88.

Design—Marks, Q, 88.

Design—Mode of description—Combination, R, 88.

With particular thing—Design, S, 88.

Design—Copyright on, S. 47, 89.

Repeal, S. 80, 102.

Restoration, of lapsed patent, S. 16, 40, 41.

Revocation, Compulsory licenses and, S. 22, 46, 47.

of patents worked outside British India, S. 23, 47—49.

of patent on public grounds, S. 25, 49.

Petition for, of patent, S. 26, 49—51.

Revocation—(Concluded).

Act V of 1898, S. 39—Respondent showing cause by affidavits—Issue directed to be tried—Onus of proof at trial, *M*, 50.

Petition for—Notice of proceedings to persons interested, S. 27, 51.

pending inquiry—Estoppel—Patent—Action for infringement—Judgment, *M*, 63.

Royalty, Infringement—Jurisdiction—Detail of breaches—Act XV of 1859, Ss. 4, 22 and 34—Measure of damages, *Y*, 61.

Sale for £5,000 and,—Vendor's lien in respect of unpaid royalties—Patents, *N*, 67.

Rules, Power for Governor-General in Council to make rules, S. 77, 101.

S

Sale, of component parts of infringing machine—Patent—Infringement, *B*, 57, 58.

Manufacture and, of component part of a combination patent,—Infringement, *C*, 58.

Requirements before delivery on, S. 48, 89, 90.

Marking of articles before delivery on, *X*, 90.

Saving, for prerogative, S. 79, 102.

Schedule, The, 103.

Sealing, Inquiry before, patent, S. 8, 28.

Grant and, of patent, S. 10, 29.

Opposing to,—Patent, *A*, 30.

Signature, and verification of documents specified in S. 75 of the Act, *R*, 100.

Solicitor, Payment by, solicitor's right to recover from client—Practice—Patent action—Shorthand notes, *M*, 66, 67.

and client—Costs—Validity of patent questioned in previous action—Certificate, *A*, 73.

Specification, Patent, S. 4, 21—26.

Method of construction, *D—I*, 22.

Construction, *J, K*, 22.

Evidence, *L*, 23.

Title must not be inconsistent with the,—Patent, *N—Q*, 23.

Objection to form of—Patent, *R*, 23.

Sufficiency—Disclosure, *S, T*, 23.

Test of sufficiency, *U—V*, 24.

Sufficiency of, *Z*, 24.

Must not be ambiguous, *A—C*, 24, 25.

Misleading, *D—F*, 25.

Omitting essential matters, *G—K*, 25.

Copyright, *L*, 25.

Method, *P*, 27.

Description of genus not species, *Q*, 27.

Sufficient description, *R*, 27.

Drawings not properly explained, etc., *S*, 27.

Amendment of application or, by Controller, S. 17, 41—44.

Amendment of, by the Court—Patent, S. 18, 44.

Prohibition of publication of, drawings, etc., where application abandoned, etc., S. 95, 96.

Transmission of certified printed copies of, etc., S. 72, 99.

Stay of proceedings, Power of High Court to stay proceedings, etc., S. 34, 74.

Subscription, and verification of certain documents, S. 75, 99, 100.

T

Threats, Remedy in case of groundless, of legal proceedings, S. 36, **74—81**.

Restraining, generally, *D—K*, **75, 76**.

Action to restrain, of legal proceedings—Validity of patent—Burden of proof, *P*, **77**.

by circulars, advertisements or otherwise—Private letter, *V*, **78**.

contained in letters in answer to inquiries—Privilege communication, *W*, **78**.

what are—"without prejudice," *Y*, **78, 79**.

Patent—Letter—No reference to patents, **79**.

Injunction to restrain, of proceedings by persons other than person enjoined—

Breach of injunction—Patent, *Z—A*, **79**.

Patent—Due diligence in instituting action, *C*, **80**.

Prosecuting action with due diligence, *D*, **80**.

Right of action—Costs, *E*, **80**.

Title of invention—Patent—Nature, *M*, **23**.

must not be inconsistent with the specification—Patent, *N—Q*, **23**.

Trade name Patent—Similarity—"Likely to deceive"—Descriptive or fancy name—

Secondary meaning—Injunction, *K*, **54, 55**.

Transmission, of decrees and orders to the controller—Patent, S. 33, **74**.

Entry of assignments and ip registers, S. 63, **96**.

of certified printed copies of specifications, etc., S. 72, **99**.

True and first inventor, Patent, *O, P*, **14**.

Trust, Notice of, not to be entered in registers, S. 58, **95**.

U

User, What is, of patent—Infringement, *S—U*, **60**.

not for purposes of profit whether infringement—Patent, *V*, **60**.

Prior publication and,—Patent, *J—M*, **82, 83**.

V

Verification, Subscription and, of certain documents, S. 75, **99, 100**.

Signature and, of documents specified in S. 75 of the Act, *R*, **100**.

W

Waiver, Design—Publication no,—Infringement, *D*, **93**.

Words and phrases, Meaning of—Advocate-General, S. 2, **8—13**.

Article, S. 2, **8—13**.

Controller, S. 2, **8—13**.

Copyright, S. 2, **8—13**.

Design, S. 2, **8—13**.

District Court, S. 2, **8—13**.

High Court, S. 2, **8—13**.

Invention, S. 2, **8—13**.

Legal representative, S. 2, **8—13**.

Manufacture, S. 2, **8—13**.

Patent, S. 2, **8—13**.

Patentee, S. 2, **8—13**.

Prescribed, S. 2, **8—13**.

Proprietor, S. 2, **8—13**.

Assign, *Q, R*, **14**.

THE
UNCLAIMED DEPOSITS ACT, 1866.

(ACT XXV OF 1866)

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

AND PUBLISHED BY

T. A. VENKASAWMY ROW

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THE UNCLAIMED DEPOSITS ACT, 1866.

(ACT XXV OF 1866¹.)

(Passed on the 11th July, 1866.)

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act	How affected.
1866	XXV	Unclaimed Deposits ...	Rep. in part, Act XXIV of 1867. Act XVI of 1874. Act XII of 1876. Act XII of 1891. Supplemented, Act V of 1870.

An Act to transfer to the Government of India certain securities and monies deposited in the High Courts of Judicature at Fort William, Madras and Bombay * * .

WHEREAS it is expedient that certain securities and sums of money deposited in the High Courts of Judicature at Fort William, Madras and Bombay * * * *, in the course of suits in the said Courts or in the late Supreme Courts at Calcutta, Madras and Bombay, respectively, and now or hereafter appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, should be transferred and paid to the Government of India for the general purposes of Government: * * * * It is hereby enacted as follows:—

(Notes).

1.—“Act XXV of 1866.”

(1) Short title.

“The Unclaimed Deposits Act, 1866.” See the Indian Short Titles Act XXV of 1866, see Gazette of India, 1866, p. 890. A

(2) Proceedings in Council.

For—relating to the Bill, see Gazette of India, 1866, supplement, p. 304. B

(3) Legislative changes.

The portions of this Act which referred to the Administrator-General of Bengal which were repealed by the Administrator-General's Act, 1867 (XXV of 1867) and the Repealing Act, 1876 (XII of 1876) and those which referred to the Supreme Court of the Straits Settlements, which were repealed by the Repealing Act, 1874 (XVI of 1874), and by Act XII of 1876, have been omitted. C

(4) Scope of Act—Limitation.

(a) Act XXV of 1866 enacts that monies paid into or deposited in the High Court in the course of suits and remaining unclaimed for 20 years

1.—“Act XXV of 1866.”—(Concluded).

are to be transferred and paid to Government; such monies or securities are, however, liable to repayment on subsequent establishment of claim to the satisfaction of the High Court. 10 C.W.N. 354 (359). **D**

(b) The only limitation applicable to an application for payment of monies held by the Court as realization in execution is that provided by Act XXV of 1866. There is no other limitation. 10 C.W.N. 354. **E**

1. All securities and sums of money deposited in the said High Courts * * or any of them, in the Courts of suits in any of the said Courts * * * , and * *

Money deposited in High Courts and unclaimed for twenty years, to be transferred to Government.

appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, shall be transferred and paid to the Government of India

for the general purposes of Government.

(Note).

Legislative Changes.

See notes under the “Preamble” to this Act. **F**

N.B.—The words “or of the late Supreme Courts of Calcutta, Madras and Bombay,” before and the words “or hereafter” after, the word “and” were repealed by Act XII of 1891.

2. (*Proceeds of estate administered under order of Supreme Court of Straits Settlements or in charge of Administrator General of Bengal.*) Rep. by the Administrator General's Act, 1867 (XXIV of 1867), and the Repealing Act, 1874 (XVI of 1874).

3. Nothing in this Act shall authorize any transfer or payment of any such securities, sums of money or proceeds as aforesaid, pending any suit already instituted or which shall hereafter be instituted in respect thereof.

Transfer not made pending suits.

4. If any claim shall hereafter be made to any part of the securities, monies or proceeds which shall be transferred and paid to the Government of India under the provisions of this Act, and if such claim shall, in the case of securities and monies transferred and paid under the first section of this Act, be established to the satisfaction of the High Court * * * from which the transfer shall have been made, * * *, the Government of India shall pay to the claimant the amount of the principal so transferred and paid as aforesaid, or so much thereof as shall appear to be due ¹ to the claimant. * * * *

Re-payment on subsequent establishment of claim.

(Notes).

Legislative Changes.

See notes under the “Preamble” to this Act.

1.—“Appear to be due.”

Costs of petition.

As to the ——— under this section, see the Unclaimed Deposits Act, 1870 (V of 1870). **H**

THE UNCLAIMED DEPOSITS ACT, 1870.

(ACT V OF 1870¹.)

[Passed on the 4th February, 1870.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1870	V	Unclaimed Deposits ...	Rep. in part, Act II of 1874. Act XVI of 1874.

An Act to enable the High Courts at the Presidency-towns to deal with costs of petitions for certain moneys transferred to Government.

WHEREAS the High Courts of Judicature at Fort William, Madras
• Preamble. and Bombay have no power to deal with the costs
of petitions under S. 4 of Act XXV of 1866 (to
*transfer to the Government of India certain securities and moneys deposited
in the High Courts of Judicature at Fort William, Madras and Bombay*
* * *) * * * for payment of certain securities, moneys or proceeds
transferred to Government ;

And whereas it is expedient to confer such power upon the said High
Courts ;

It is hereby enacted as follows :—

(Notes).

1.—“Act V of 1870.”

(1) Short title.

“The Unclaimed Deposits Act, 1870.” See the Indian Short Titles Act, 1892
(XIV of 1897). A

(2) Statement of Objects and Reasons.

For the——, see Gazette of India, 1870, Pt. V, p. 5. B

(3) Proceedings in Council.

For —— see Gazette of India, 1869, supplement p. 1506 ; Gazette of India,
1870, supplement pp. 53, 57, 92 and 136. C

(4) Legislative Changes.

The words “and in the Supreme Court of the Straits Settlements and the
proceeds of certain estates in the charge of the Administrator General
of Bengal ” after the words “Bombay ” were repealed by the Repealing
Act, 1874 (XVI of 1874). D

1.—“Act V of 1870 ”—(Concluded).

The words “ or under S. 60 of the Administrator General’s Act, 1870 ”, before
 “ for payment of etc.”, have been omitted as Act XXIV of 1867 and
 this Act so far as it relates to the Administrator General were repealed
 by Act II of 1874. **E**

(b) Rules.

See rules for twenty-two Madras ports, Gazette of India, 14th Sep. 1872,
 p. 872, Fort St. George Gazette, 1st Oct., 1872, p. 1617: Supplementary
 Rules Gazette of India, 4th Oct. 1873, p. 881: Port Surgeons, Fort
 St. George Gazette, 7th Sep. 1875, p. 1509. **F**

Rules for eight Burmese ports, Gazette of India, 29th March 1873, p. 271.

Power to direct by
 whom costs are to
 be paid.

1. Whenever any of the said Courts shall make
 an order on any such petition, the Court may direct by
 whom the whole or any part of the costs of each party
 are to be paid.

THE
INDIAN LAW REPORTS ACT, 1875.

(ACT XVIII OF 1875.)

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

AND PUBLISHED BY

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THE INDIAN LAW REPORTS ACT, 1875.

(ACT XVIII OF 1875¹.)

Passed by the Governor-General of India in Council.

(Received the assent of the Governor-General on the 13th October, 1875.)

An Act for the improvement of Law Reports.

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1875	II	The Indian Law Reports ...	Rep. Act XVIII of 1875.
1875	XVIII	Do. ...	Rep. in part Act XII of 1876.

WHEREAS it is expedient to diminish the multitude and expense of the law reports published in British India, and to improve their quality: And whereas with a view to furthering these objects, the Governor-General in Council proposes to authorize the publication of reports of cases decided by the High Courts of Judicature established under the 24th and 25th of Victoria, Chapter 104²; It is hereby enacted as follows:—

(Notes).

1.—“ Act XVIII of 1875.”

(1) Statement of Objects and Reasons.

For the———, see Gazette of India, 1875, Pt. V, p. 139.

(2) Proceedings in Council.

For———, see Gazette of India, Extra supplement, dated 31st July, 1875, p. 5 and Gazette of India, Extraordinary, dated 25th October, 1875, p. 1.

PUBLICATION OF THE INDIAN LAW REPORTS.

1.—Allahabad Series.

1. A Reporter shall be appointed for the High Court of the North-Western Provinces, and shall work under the supervision of a Council to be constituted as follows:—

One Puisne Judge.

Two Barristers.

Two Vakils of the Court.

Each of the above shall from time to time be appointed by the Chief Justice.

2. The Reporter shall be appointed and paid by the Governor-General in Council.

3. The Reporter shall be primarily responsible for the selection and form of the reports, but on all questions of principle he shall consult, and be guided by the Council.

Act XVIII of 1875 (INDIAN LAW REPORTS ACT).

1.—“Act XVIII of 1875 ”—(Continued).

1.—Allahabad Series—(Concluded).

4. The entire supervision of the literary work and editing of the reports, including such arrangements as may be needed to ensure the report of each case being ready for the press as soon as possible after judgment is delivered, will rest with the Council; the Local Government being responsible for all arrangements connected with printing, publication and distribution.

5. If the Judge or Judges who decided any case desires or desire that it should not be reported, it shall not be reported.

6. If the Court or the Chief Justice desires that the Reporter shall consult it or him, or any Committee appointed by it or by him on any case or matter, it shall be his duty to do so.

7. If the Court or the Chief Justice desires that any case decided by the Court or by any Division or Judge thereof shall be reported, and signifies such desire to the Reporter, the case shall, subject to rule 5, be reported and published.

8. The Council may, with the approval of the Chief Justice, make rules of business for the Council.

9. The reports shall be published under the authority of the Governor-General in Council, and the Council is hereby empowered to publish them under such authority.

10. In framing reports regard shall be had to the following general rules and principles :—

- (a) Every report ought to contain a statement of all facts necessary for a due understanding of the decision.
- (b) Reports ought not to state any facts which are clearly unnecessary for a due understanding of the decision.
- (c) In judging whether to insert or to omit a statement of facts, it is better to err on the side of over-statement than of under-statement.
- (d) It is not meant that the Reporter must state the facts over again if there is a clear, full and consecutive statement of them in the judgment.
- (e) As a general rule, cases for which a full statement of facts cannot be obtained are not to be reported.
- (f) As a general rule, every report ought to contain a statement of the arguments of counsel, sufficient to show what points were pressed upon the Court.
- (g) The Reporter should note any material bearing which the decision may have on other decisions or on any principle of law, and which is not otherwise apparent on the face of the report.
- (h) Every report ought to contain a full copy or account of the judgment delivered by the Court and by each Judge thereof, or of so much of the judgment as bears on the point for which the case is reported.
- (i) As a general rule, cases turning upon evidence or inferences of fact, cases relating to the construction of private documents, and generally cases which do not illustrate some principle of law or some important bearing of an enactment in a way not covered by previous decisions, ought not to be reported.
- (j) In selecting cases for report, the Reporter is to be guided by the weight and importance of the decision, and the existence of materials for a satisfactory report, and is not to abstain from reporting a case merely because he may think the decision to be erroneous, or to be in conflict with other decisions. [Government of India Notification No. 14, dated the 7th August 1885. See Gazette of India, 1885, Pt. I, p. 431.]

1.—“ Act XVIII of 1875 ”—(Continued).

II.—Bombay Series.

ORDER.

The Governor-General in Council is pleased to make the following rules in regard to the publication of the Bombay Series of the Indian Law Reports in supersession of so much of the Notification of the Government of India in the Legislative Department, No. 14, dated the 7th August, 1885, as relates to that series.

1. The staff for editing the Bombay Series of the Indian Law Reports shall be an Editor assisted by two or more Reporters as the Council of Law Reporting may prescribe.

2. The Editor shall have control over, and define the duties of, the Reporters, and shall work under the supervision of the Council of Law Reporting.

3. The Council of Law Reporting shall be constituted as follows:—

The Chief Justice,
Two Puisne Judges,
The Advocate-General,
The Government Pleader.

The two Puisne Judges shall, from time to time, be selected by the Chief Justice.

4. The Editor shall be appointed and paid by the Governor-General in Council. The Reporters shall be appointed by the Editor with the approval of the Council of law Reporting.

5. The number of Reporters and the salaries to be paid to them shall be determined by the Council of Law Reporting, and the salaries of the Reporters shall be paid by the Editor out of his own salary.

6. The appointment of the Editor shall be for a period not exceeding five years at a time.

7. The appointment of the Reporters shall be on such terms as the Council of Law Reporting may determine.

8. The Local Government shall be responsible for all arrangements connected with the printing, publication and distribution of the Reports.

9. The Council may, with the approval of the Chief Justice, make rules of business for the Council.

10. The Reports shall be published under the authority of the Governor-General in Council, and the Council is hereby empowered to publish them under such authority.

11. Subject to such instructions as may, from time to time, with the approval of the Chief Justice, be issued by the Council, regard shall be had in framing Reports to the following general rules and principles:—

(a) Every Report ought to contain a statement of all facts, necessary for a due understanding of the decision.

(b) Reports ought not to state any facts which are clearly unnecessary for a due understanding of the decision.

(c) In judging whether to insert or to omit a statement of facts, it is better to err on the side of overstatement than of understatement.

(d) It is not meant that the Reporter must state the facts over again if there is a clear, full and consecutive statement of them in the judgment.

(e) As a general rule, cases for which a full statement of facts cannot be obtained are not to be reported.

(f) As a general rule, every Report ought to contain a statement of the arguments of counsel, sufficient to show what points were pressed upon the Court.

I.—“Act XVIII of 1875 ”—(Continued).**II.—Bombay Series — (Concluded).**

- “ (g) The Reporter should note any material bearing which the decision may have on other decisions or on any principle of law, and which is not otherwise apparent on the face of the Report.
- (h) Every Report ought to contain a full copy or account of the judgment delivered by the Court, and by each Judge thereof, or of so much of the judgment as bears on the point for which the case is reported.
- (i) As a general rule, cases turning upon evidence or inferences of fact, cases relating to the construction of private documents, and generally, cases which do not illustrate some principle of law or some important bearing of an enactment in a way not covered by previous decisions, ought not to be reported.
- (j). In selecting cases for report, the Reporter is to be guided by the weight and importance of the decision, and the existence of materials for a satisfactory report, and is not to abstain from reporting a case merely because he may think the decision to be erroneous or to be in conflict with other decisions.

III.—Calcutta Series.*Revised Rules for the Calcutta Series, Indian Law Reports.*

No. 19, dated the 31st August, 1894.—In supersession of that portion of the Notification in this Department, No. 14, dated the 7th August, 1885, which relates to the Calcutta Series of the Indian Law Reports, the Governor-General in Council has been pleased to make the following rules in regard to the publication of the said series:—

1. The Reports will be published under the supervision of a Council to be constituted as follows :

The Judges of the High Court, Calcutta, nominated by the Court.

A Barrister nominated by the Advocates of the said High Court.

A Vakil nominated by the Vakils practising in the said High Court.

An Attorney nominated by the Attorneys duly authorized to practise in the said High Court.

2. Each member of the Council shall continue in office for one year from the date of his nomination and no longer ; but any retiring member may be re-nominated for a further term of one year, and so on as often as the nominating body shall please.

3. The Hon'ble the Chief Justice on behalf of the Court, the Hon'ble the Advocate-General on behalf of the Bar, the Senior Government Pleader on behalf of the Vakils, and the President of the Attorney's Association on behalf of the Attorneys, are hereby respectively authorised to take such steps as may be necessary for giving effect to the foregoing regulations

4. The Council shall have the sole power of fixing the number of Reporters and the amount of their remuneration, and of appointing, suspending and dismissing them ; and it shall have authority to frame such rules as it may deem fit for the guidance of the Reporters in the preparation and publication of the Reports and generally in the discharge of their duties.

5. The Governor-General in Council will place at the disposal of the Council the sum of Rs. 1,862 per mensem, or such other sum as may from time to time be sanctioned for the purpose, for or towards the remuneration of the Reporters and the defraying of the cost of their office establishment and stationery.

6. The Local Government will be responsible for all arrangements connected with printing, publication and distribution of the reports.

I.—“Act XVIII of 1875”—(Continued).

III.—Calcutta Series—(Concluded).

7. The reports shall be published under the authority of the Governor-General in Council, and the Council constituted under these rules is hereby empowered to publish them under such authority. [See Gazette of India, 1894, Pt. I, p. 489.]

IV.—Madras Series.

1. A Reporter shall be appointed for the High Court of Madras, and shall work under the supervision of a Council to be constituted as follows :—

A Judge of the High Court.
The Advocate-General.
One other Member of the Bar.
One Solicitor.
One Vakil.

The Judge, Member of the Bar, Solicitor and Vakil shall from time to time be appointed by the Chief Justice.

2. The Reporter shall be appointed and paid by the Governor-General in Council.

3. The Reporter shall be primarily responsible for the selection and form of the reports, but on all questions of principle he shall consult, and be guided by the Council.

4. The entire supervision of the literary work and editing of the reports, including such arrangements as may be needed to ensure the report of each case being ready for the press as soon as possible after judgment is delivered, will rest with the Council, the Local Government being responsible for all arrangements connected with printing, publication and distribution.

5. If the Judge or Judges who decided any case desires or desire that it should not be reported, it shall not be reported.

6. If the Court or the Chief Justice desires that the Reporter shall consult it or him, or any Committee appointed by it or by him on any case or matter, it shall be his duty to do so.

7. If the Court or the Chief Justice desires that any case decided by the Court or by any Division or Judge thereof shall be reported, and signifies such desire to the Reporter, the case shall, subject to rule 5, be reported and published.

8. The Council may, with the approval of the Chief Justice, make rules of business for the Council.

9. The reports shall be published under the authority of the Governor-General in Council, and the Council is hereby empowered to publish them under such authority.

10. In framing reports regard shall be had to the following general rules and principles :—

(a) Every report ought to contain a statement of all facts necessary for a due understanding of the decision.

(b) Reports ought not to state any facts which are clearly unnecessary for a due understanding of the decision.

(c) In judging whether to insert or to omit a statement of facts it is better to err on the side of over-statement than of under-statement.

(d) It is not meant that the Reporter must state the facts over again if there is a clear, full and consecutive statement of them in the judgment.

(e) As a general rule, cases for which a full statement of facts cannot be obtained are not to be reported.

1.—“Act XVIII of 1875”—(Concluded).

IV.—Madras Series—(Concluded).

- f) As a general rule, every report ought to contain a statement of the arguments of counsel, sufficient to show what points were pressed upon the Court.
- (g) The Reporter should note any material bearing which the decision may have on other decisions or on any principle of law, and which is not otherwise apparent on the face of the report.
- (h) Every report ought to contain a full copy or account of the judgment delivered by the Court and by each Judge thereof, or of so much of the judgment as bears on the point for which the case is reported.
- (i) As a general rule, cases turning upon evidence or inferences of fact, cases relating to the construction of private documents, and, generally, cases which do not illustrate some principle of law or some important bearing of an enactment in a way not covered by previous decisions, ought not to be reported.
- (j) In selecting cases for report, the Reporter is to be guided by the weight and importance of the decision, and the existence of materials for a satisfactory report, and is not to abstain from reporting a case merely because he may think the decision to be erroneous, or to be in conflict with other decisions. [Government of India Notn. No. 14, dated the 7th August 1885; *Gazette of India*, 1885, Pt. I, p. 431.] A

2.—“24th and 25th of Victoria, Chapter 104.”

See “The Indian High Courts Act.”

Short title.	1. This Act may be called The “Indian Law Reports Act, 1875.”
Local extent.	It extends to the whole of British India ¹ ;
Commencement ² .	And it shall come into force on such day as the Governor-General in Council notifies in this behalf in the <i>Gazette of India</i> .

(Notes).

1. —“Extends to the whole of British India.”

Places where Act has been declared to be in force.

This Act has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely :—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum. (The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894; Lohardaga is now called the Ranchi District, see *Calcutta Gazette*, 1899, Pt. I, p. 44). See *Gazette of India*, 1881, Pt. I, p. 504. B

2.—“Commencement.”

Operation of the Act.

This Act came into force on the 1st January 1876, see *Gazette of India*, 1875, Pt. I, p. 589. B-1

2. Act II of 1875 (*to diminish the multitude and improve the quality of Law Reports, and to extend the area of their authority*) is hereby repealed.

3. No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case decided by any of the said High Courts on or after the said day, other than a report published under the authority of the Governor-General in Council.

Authority given only to authorized reports'.

(Notes).

1.—“ Authority given only to authorized report.”

(1) Unreported case—No authority.

An unreported case or ruling is not to be treated as an authority, regard being had to S. 3 of Act XVIII of 1875, 4 C.W.N. 732. (*Diss.*, 28 C. 289 = 5 C.W.N. 326.) C

(2) Scope of S. 3—Monopoly of Indian Law Reports.

S. 3 was framed to constitute a monopoly, if the Judges so desired, for the authorized Law Reports. It does not prevent the Court from looking at an unreported judgment of other Judges of the same Court. 28 C. 289 = 5 C.W.N. 326. (4 C.W.N. 732, *Diss.*)

A High Court judgment is none the less an authority because it has not been reported. 5 C.W.N. 326 (327). D-E

(3) Proper use to be made of Law Reports by Court.

A Court is entitled to refer to reports of cases as precedents. But, because a judgment, order or decree finds a place in the reports of cases, the Court should not take cognizance of such judgment, order, etc. The party relying on it should be asked to produce a copy of the same and file it in the record of the case. [27 C. 1 (P.C.), *R.*] 28 C. 171. F

4. Nothing herein contained shall be construed to give to any judicial decision any further or other authority than it would have had if this Act had not been passed.

Authority of judicial decisions.

THE
WASTE LANDS (CLAIMS) ACT.

(ACT XXIII OF 1863.)

(WITH THE CASE-LAW THEREON)

COMPILED AT
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THE WASTE LANDS (CLAIMS) ACT, 1863.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Provision for enquiry into claims to land, or objections to sale of same.
2. Procedure in such cases.
Notification of conditions.
3. Postponement of sale pending enquiry, to allow claimant to contest rejection of claim.
4. Sale to be stopped if claim appear to be established, but may afterwards be proceeded with.
5. Delivery to claimant of copy of order of rejection or of sale.
Order when final.
Report to Board.
Decision of Board.
Certification to Court.
Notice to claimant.
Decision when final.
6. Power to order suit to try claim admitted by Collector.
7. Special Court for trying claims.
Power of members.
Exclusion of officer making original enquiry.
8. Notice of constitution of Special Courts.
Claims not cognizable in other Courts.
9. Special Courts when held.
10. Plaintiff and defendant in suit under section 5.
Appearance.
Proviso.
Plaintiff and defendant in suit under section 6.
11. Regulation of proceedings.
12. Procedure before hearing.
Procuring attendance of witnesses.
Power to require attendance of claimant.
13. Procedure on hearing.
14. No appeal or revision.

Act XXIII of 1863 (THE WASTE LANDS (CLAIMS) ACT).

15. Reference of question of law, etc., to High Court, etc.
When reference obligatory.
16. Court may proceed notwithstanding reference, but not make final order.
17. Records of cases where to be deposited.
18. Limitation as to claims to land sold or dealt with.
Provision for such claims if preferred within time.
19. If claim established, possession not to be given, but compensation.
20. When land sold not absolutely, or not sold, but otherwise dealt with.
21. Award under two last sections to be in full satisfaction.
22. Government not barred from awarding compensation for land absolutely sold, though claim be not preferred in time.
23. Compensation for land sold subject to condition, if claim proved, though not preferred in time.
24. Interpretation-clause.
Number.
Gender.

THE WASTE LANDS (CLAIMS) ACT, 1863:

(ACT XXIII OF 1863 1.)

[*Passed on the 10th March, 1863.*]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected,
1863.	XXIII	The Waste Lands (Claims)	Rep. in part, Act IX of 1871.

An Act to provide for the adjudication of claims to waste lands.

WHEREAS it is expedient to make special provision for the speedy adjudication of claims which may be preferred to waste lands proposed to be sold, or otherwise dealt with, on account of Government, and of objections taken to the sale or other disposition of such lands : It is enacted as follows:—

(Notes).

1.—“ Act XXIII of 1863.”

(1) Short title.

“ The Waste Lands (Claims) Act, 1863.” See the Indian Short Titles Act, 1897 (14 of 1897). A

(2) Proceedings relating to the Bill.

For—, see Calcutta Gazette, 1863, Supplement, p. 109. B

(3) Places where Act has been declared to be in force.

This Act has been declared to be in force in—the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), S. 3, the Arakan Hill Districts, by the Arakan Hill Districts Laws Regulation, 1874 (9 of 1874) S. 3. C

It has further been declared by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely :—

West Jalpaiguri	...	See Gazette of India, 1881, Pt. 1, p. 1.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. 1, p. 44) and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum.	...	Ditto. 1881, Pt. 1, p. 504
The Porahat estate in the Singhbhum District.	...	Ditto. 1897, Pt. 1, p. 1059.
Kumaon and Garhwal.	...	Ditto. 1876. Pt. 1, p. 605,
The Scheduled portion of the		

Act XXIII of 1863 (THE WASTE LANDS (CLAIMS) ACT).

1.—“Act XXIII of 1863 ”—(Continued).

Mirzapur District.	...	See Gazette of India, 1879, Pt. 1, p. 993.
Jaunsar Bawar.	...	Ditto. 1879, Pt. 1, p. 992.
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan. [Portions of the Districts of Hazara, Bannu. Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat now form the North West Frontier Province, see Gazette of India, 1901, Pt. 1, p. 557. and <i>ibid.</i> , 1902, Pt. 1, p. 575, but its application to that part of the Hazara district known as Upper Tanawal has been barred by the Hazara (Upper Tanawal) Regulation, 1900 (2 of 1900) ..	...	Ditto. 1886, Pt. 1, p. 48.
The District of Lahaul	...	Ditto. 1886, Pt. 1, p. 301.
The District of Sylhet	...	Ditto. 1879, Pt. 1, p. 631.
The Districts of Kamrup, Nagaong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars) and Cachar (excluding the North Cachar Hills).	...	Ditto. 1878, Pt. 1, p. 533.

It has been declared under S. 3 (b) of the same Act not to be in force in the Scheduled Districts in Ganjam and Vizagapatam, see Gazette of India, 1898, Pt. 1, p. 872. D

It has been extended, by notification under S. 5 of the last mentioned Act, to the following Scheduled Districts, namely:—

Western Dvars	...	See Gazette of India, 1875, Pt. 1, p. 497. E
The Tarai of the Province of Agra	...	Ditto. 1876, Pt. 1, p. 505.

(4) Construction of the Act.

- (a) This Act must be construed in accordance with the settled rules of construction. Now it is a familiar rule of construction that an Act is not to be so interpreted as to interfere with rights of property, except by express words or necessary implication. And that rule has been acted upon in this country no less than in England. 12 C. 279 (284). F
- (b) On the one hand, where the Legislature has intended to take away proprietary rights it has expressed that intention in clear language. (*Ibid.*) G

Examples.

- (i) Thus in Regulation VIII of 1819, when it was intended that the sale of a tenure for arrears of rent should put an end to intermediate incumbrances, the language of S. 11 stated that intention expressly. (*Ibid.*) H

I.—“Act XXIII of 1863 ”—(Continued).

(ii) So again in the Limitation Act, XV of 1877, when it is intended that on the determination of the period for suing to recover property the right shall be extinguished, the words of S. 28 clearly say so. (*Ibid.*) **I**

(c) On the other hand, where an Act expressly takes away one particular remedy which would otherwise have been open for enforcing a right of property, or in any other particular interferes with proprietary rights but does not, in express words or by necessary implication, declare that those rights shall cease to exist, the method of interpretation which has been and ought to be adopted is to give effect to the Act exactly so far as its words extend, and no further. (*Ibid.*) **J**

(5) Claims dealt with by the Act.

The only claims dealt with by the Act are claims set up by persons objecting to or complaining of the sale of lands as waste lands. 12 C. 279 (285). **K**

(6) Whether Act applies at all to any lands except lands which are the property of Government.

(a) An Act interfering with private right is to be construed strictly. 12 C. 279.

(b) *Quere* :—Whether the terms of the Act are not sufficiently satisfied by making it apply to waste lands of Government ; and by understanding the claims and objections mentioned in the Act as claims in respect of Government land and objections with the same limitation—claims for example of tenants and others claiming to hold under Government, claims to easements and other rights over the land, claims and objection based upon contract. (*Ibid.*) **L**

(7) Consequences of holding that provisions of Act bar rights of real owner.

The consequences of holding that the provisions of this Act bar the right of the real owner, especially if those provisions be extended to titles adverse to the proprietary right of Government whom it professes to sell, would be very serious ; and the effect might be in many cases not to promote security of titles, but insecurity. 12 C. 279 (287). **M**

(8) Consequences of holding that Act applies to lands sold as waste land.

The consequences of holding that the Act applies to lands sold as waste land, though not so in fact, would be not less serious. 12 C. 279 (287). **N**

(9) Object of Act.

(a) The object of the Act, would seem to have been to give a purchaser or lessee of waste land under Government a clear title to the land itself, the Government holding itself responsible to compensate any person who may establish a claim to the land within a certain time. 12 C. 279 (289). **O**

(b) This view of the Act has been adopted by this Court in 7 W.R. 474 in which it was held that claims to land sold under the Act can only be preferred in accordance with the provisions of the Act, and that the jurisdiction of the ordinary Court is barred. (*Ibid.*) **P**

(10) Waste-land—Definition—Application of Act.

(a) No definition of waste land is given in the Act and the expression may therefore be taken to have its usual meaning of unoccupied or uncultivated land. 12 C. 279 (290). **Q**

(b) And nowhere in the Act is it said that the waste lands spoken of must be unoccupied lands, the property of Government, (*Ibid.*) **R**

1.—“Act XXIII of 1863” —(Concluded).

- (c) It is assumed of course that lands will not be sold unless they are the property of Government; but the very object of the Act is to dispose of claims preferred on the ground that the land sold or otherwise disposed of is not the exclusive property of Government, but that the claimant has a proprietary right or some other interest in it. (*Ibid*). S

1. When any claim shall be preferred to any waste land proposed to be sold, or otherwise dealt with, on account of Government, or when any objection shall be taken to the sale ¹ or other disposition ² of such land, the Collector of the district in which such land is situate, or other officer performing the duties of a Collector of Land Revenue in such district by whatever name his office is designated, shall, if the claim or objection be preferred within the period mentioned in the advertisement to be issued for the sale or other disposition of such land, which period shall not be less than three months, proceed to make an enquiry into the claim or objections.

(Notes).

1.—“Sale”

Waste lands—Sale.

Waste lands are of two descriptions, assessed and unassessed. Boards Standing Orders, No. 32. T

(i) ASSESSED WASTE LANDS.

When——is darkhasted for by two or more persons and the Tahsildar, Divisional Officer or Collector is unable to decide which of them has the best claim to have the land assigned to him for cultivation, the Collector of the District may order the right of occupying the land to be sold by public auction to the highest bidder. (*Ibid*). U

(ii) UNASSESSED WASTE LAND.

Re——it will be put to auction and sold to the highest bidder, if before the time of sale no claim of private proprietorship or of exclusive occupancy, or of any other right, incompatible with the sale of the land be preferred to the land, Boards Standing Orders, No. 34. Y

2.—“Other disposition.”

“Other disposition,” scope of the expression.

The expression “other disposition” probably refers to the right of Government to grant unassessed waste lands on puttah, cowle or otherwise. See Boards Standing Orders, No. 34. W

2. The Collector or other officer as aforesaid shall call upon the claimant or objector to produce any evidence, or documents, upon which he may rely in proof of his claim or objection; and after considering the same, and making any further enquiry that may appear proper, shall dispose of the case by an order for the admission or rejection of the claim or objection; and if the land is proposed to be sold, for the sale of the same subject to any condition or reservation which, to such Collector or other officer as aforesaid, shall appear to be proper.

Procedure in such cases.

Sec. 2 to 5] Act XXIII of 1863 (THE WASTE LANDS (CLAIMS) ACT). 7

Notification of conditions. If the land is ordered to be sold subject to any condition or reservation, such condition or reservation shall be notified to intending purchasers at the time of sale.

(Note).

Scope of section.

This section provides for the procedure to be observed by the Collector and the order to be made by him. 12 C. 279 (282). **X**

Postponement of sale pending enquiry. 3. Pending an enquiry into any claim or objection under the last preceding section the Collector or other officer as aforesaid shall postpone the sale or other disposition of the land :

and, if he shall order that such claim or objection be rejected, he shall further postpone the sale or other disposition of the land, to allow the claimant or objector to contest the order of rejection in the manner hereinafter provided.

(Note).

Scope of section.

This section provides for stay of sale pending enquiry. 12 C. 279 (282). **Y**

Sale to be stopped if claim appear to be established, but may afterwards be proceeded with. 4. If the Collector or other officer as aforesaid, shall consider the claim or objection to be established, and that the sale or other disposition of the land should not take place, he shall stop the sale or other disposition of the land ;

but such sale or other disposition of the land may afterwards be proceeded with, if, on an order issued by the Local Government to try the claim or objection, as provided in section 6 of this Act, the claimant or objector shall fail to establish the same.

(Note).

Scope of section.

This section provides for an absolute stay if the Collector finds the claim or objection well founded. 12 C. 279 (283). **Z**

Delivery to claimant of copy of order of rejection or of sale. 5. If the Collector or other officer as aforesaid shall order that the claim or objection be rejected, or that the land be sold subject to any condition or reservation, or that it be otherwise dealt with, he shall cause a copy of such order to be delivered to the claimant or objector ;

and if such claimant or objector shall not, within one week from the delivery of such copy, or within such further time as the Collector or other officer as aforesaid, for any special reason to be recorded, shall see fit to grant, give notice in writing to such Collector or other officer as aforesaid, that he intends to contest such order, the order shall be final.

If the claimant or objector shall, within the time allowed, give such notice, the Collector or other officer as aforesaid shall immediately make a report to the Board of Revenue or other superior revenue authority; and shall forward with such report a copy of his order, stating fully all the circumstances of the case, and the evidence adduced in support, or otherwise, of the claim or objection;

and such Board, or other authority, on the receipt of such report, and after calling for any further information which it may consider necessary, may confirm, modify or reverse the order of the Collector or other officer as aforesaid.

If the Board or other authority as aforesaid confirm the order of the Collector or other officer as aforesaid, or modify such order in such manner as to leave any part of such order in force adverse to the claimant or objector, the Collector or other officer as aforesaid shall certify such order to the Court constituted as hereinafter provided:

and such Court shall forthwith give notice to the claimant or objector;

and if such claimant or objector shall not institute a suit ² in such Court to establish his claim or objection, the order of the Board or other authority aforesaid shall be final.

(Notes).

(1) Legislative changes.

The words "within thirty days from the delivery of such notice from the Court" in the last para were repealed by the Indian Limitation Act, 1871 (9 of 1871). For limitation, see now the Indian Limitation Act, 1908 (9 of 1908). A

(2) Scope of section.

By this section, if the Collector's decision is adverse to the claimant or objector, his order is final, unless the claimant or objector, within a week after receipt of the order, or such extended time as the Collector may allow give notice that he wishes to dispute the order. If he does, the matter is to be reported to the Board of Revenue or other superior Revenue authority. If the decision of the higher revenue authority is adverse to the claimant, that decision is to be communicated to the special Court, constituted under a subsequent section, and the decision is final unless within 30 days the claimant or objector files a suit in the special Court. 12 C. 279 (282). B

N.B.—The latter part of this section is altered in form but not in substance by the subsequent Limitation Act, of 1871. C

1.—"Contest."

Collector failing to give notice—Contest if necessary.

Where the Collector failed to give notice of his intention to dispose of the estates, it was not incumbent on the plaintiff to contest the sale within the period prescribed by S. 5, Act XXIII, of 1863. 2 Agra. 268. D

2.—“ Suit.”

(1) Waste land—Stamp-duty.

In a suit under S. 5, Act XXIII of 1863, by a claimant to waste land proposed to be sold or otherwise dealt with on account of Government, or by an objection to the sale or other disposition of such land, the plaint must be on a stamp of 100 rupees. 7 W.R. 349. **E**

(2) Suit to contest award by Board of Revenue—Extension of time.

The Court cannot extend the time allowed for preferring a suit to contest an award by Board of Revenue. 5 W.R. Waste Lands Court, Ref. 1. **F**

(3) Institution of suit.

The filing of a Vakalatnama is not institution of such a suit. (*Ibid.*) **G**

6. The local Government may, within twelve months after the date on which the claim of any claimant of waste land, or

Power to order
suit to try claim
admitted by Collec-
tor.

the objection of any objector, as aforesaid, shall have been admitted under this Act by the Collector or other officer as aforesaid, direct a suit to be brought to try the claim or objection of the claimant or objector, in

Court constituted as hereinafter provided.

(Note).

Scope of section.

This section gives power to the Government to institute a suit in the special Court to dispute the finding of the Collector if in favour of the claimant or objector. 12 C. 279 (282). **H**

7. For the investigation and trial of claims under this Act, the local

Special Court for
trying claims.

Government shall constitute, in every district in which there may be any waste lands capable of being sold, otherwise dealt with, on account of Government, a

Court consisting of an uneven number of persons, not less than three, of whom the Judge of the district, or the officer presiding in the principal Civil Court of original jurisdiction in the district, by whatever name his office may be designated, shall be one.

Any one or more of the members of which such Court shall consist

Power of mem-
bers.

shall have power to make all such orders in the case as may be necessary prior to the hearing of the suit :

Provided that, whenever the Collector, or other officer, by whom the original enquiry was held, is the officer presiding in

Exclusion of officer
making original
enquiry.

the principal Civil Court of original jurisdiction in the district, such officer shall not be a member of such Court.

(Note).

Scope of section.

This section provides for the constitution of the special Court. 12 C. 279 (282). **I**

10 **Act XXIII of 1863 (THE WASTE LANDS (CLAIMS) ACT). [Ss. 8 & 9**

8. Whenever any Court is constituted under this Act, notice thereof shall be given by a written proclamation, copies of which shall be affixed in the several Courts, and in the offices of the several Collectors and Magistrates of the district ;

Notice of constitution of Special Courts.

and from the date of the issue of such proclamation no other Court shall be competent to entertain any claim ¹ or objection belonging to the class of claims or objections for the trial and determination of which such Court is constituted.

Claims not cognizable in other Courts.

(Notes).

1.—“ From the date.....claim.”

(1) **Scope of section—Construction of Act—Ordinary Courts considering claims to waste lands when raised by way of defence.**

(a) The Act must be construed strictly so far as it interferes with private rights, and there is no doubt that, whatever may have been the intention of its framers, its language, while probably sufficient to bar a suit in the ordinary Courts for the recovery of waste lands sold or otherwise disposed of by Government, does not go to the extent of barring the ordinary Courts from considering claims to such lands when raised by way of defence. 12 C. 279 (290). J

(b) By S. 8 the ordinary Courts are barred from entertaining claims and objections belonging to the class of claims or objections for the trial or determination of which the special Court is constituted. (*Ibid.*) K

(c) Such claims and objections could only be put forward before the special Court by a claimant or plaintiff. (*Ibid.*) L

(d) It is difficult to see how claims or objections raised by way of defence could come before the special Court at all. (*Ibid.*) M

(e) It seems to follow that what is barred by S. 8 is a claim or objection brought by a plaintiff and not the assertion of a title set up by way of defence. (*Ibid.*) N

(2) **Sale by Government—Rights of person in possession—Defence may be heard if set up by person in possession.**

There is nothing in Act XXIII of 1863 to prevent a person, who has a good title and has throughout been in possession, or who has a good title, and at any time succeeds in peaceably getting possession, and is not ousted in a possessory suit, or who for any other reason is in the advantageous position of a defendant, from defending his rights, notwithstanding any sale, which the Government may have professed to make under the Waste Lands Act. 12 C. 279. O

9. The Courts constituted under this Act shall be held at such place, or places, within the limits of their respective jurisdictions, as shall be considered most convenient.

Special Courts where held.

Ss. 10 & 12] Act XXIII of 1863 (THE WASTE LANDS (CLAIMS) ACT). 11

10. In every suit instituted under section 5 of this Act, the claimant of the waste land, or objector to the sale or other disposition of such land, shall appear as plaintiff; and the Collector, or other officer aforesaid, shall appear as defendant on the part of Government.

Plaintiff and defendant in suit under section 5.

Appearance.

Either party may appear by pleader or by agent :

Provided that, if such other officer as aforesaid be the presiding officer of the Principal Civil Court of original jurisdiction in the district, the local Government shall

Proviso.

appoint some other officer to appear as defendant in the case on its behalf.

In any suit ordered to be instituted by the local Government under section 6 of this Act, the Government, by an officer, to be appointed for the purpose, shall appear as plaintiff; and the claimant or objector as aforesaid shall appear as defendant.

Plaintiff and defendant in suits under section 6.

(Note).

Scope of section.

By this section, in suits in the special Court, the parties are to be the claimant or objector and the Government. 12 C. 279 (283). **P**

Regulation of proceedings.

11. In suits instituted under this Act, except as hereinafter provided, the proceedings shall be regulated, so far as they can be, by the Code of Civil Procedure.

(Note).

Scope of section.

This section relates to procedure. 12 C. 279 (283). **Q**

12. The Court shall fix a day for the appearance of the parties, and for the hearing of the suit, of which due notice shall be given to the parties or their agents; and on the day so fixed, the parties or their agents shall bring their witnesses into Court, together with any documents on which they may intend to rely in support of their respective statements.

Procedure before hearing.

If either party require the assistance of the Court to procure the attendance of a witness on such day, he shall apply to the Court in sufficient time before the day fixed for the hearing of the suit; and the Court shall issue a subpoena requiring such witness to attend the Court on that day.

Procuring attendance of witnesses.

It shall be competent to the Court to require the personal attendance of the claimant of the waste land, or objector, as aforesaid, on the day fixed for the hearing, or at any subsequent stage of the suit.

Power to require attendance of claimant.

(Note).

Scope of section.

This section relates to procedure. 12 C. 279 (283). **R**

12 Act XXIII of 1863 (THE WASTE LANDS (CLAIMS) ACT). [S. 13 to 16]

13. On the day fixed for the hearing of the suit, or as soon after as may be practicable, the Court shall proceed to examine the claimant of the waste land, or the objector, or his agent (when his personal attendance is not required), and the witnesses of the parties ;

and upon such examination, and after inspecting the documents of the parties, and making any further enquiry that may appear necessary, shall proceed to pass such order in the case as it may consider just and proper.

(Note).

Scope of section.

This section relates to procedure. 12 C. 279 (283).

S

•No appeal or revision.

14. No appeal shall lie from any decision or order passed under this Act, nor shall any such decision or order be open to revision.

15. If, on the trial of any suit under this Act, any question of law or of usage having the force of law, or the construction of a document affecting the merits of the case, shall arise, on which the Court shall entertain reasonable doubts, the Court may, either of its own motion, or on the application of any of the parties to the suit, draw up a statement of the case and submit it, with its own opinion, for the opinion of the High Court of Judicature, or of the highest Civil Court of Appeal and Revision in the territory in which the land is situate :

When reference obligatory.

Provided that it shall be the duty of every Court held under this Act to make such reference to such High Court, or Court of Appeal, if, in any suit under this Act, any question shall arise involving any principle of general importance, or the rights of a class.

(Note).

Scope of section.

This section provides for a reference from the special Court to the High Court on question of law. 12 C. 279 (283).

T.

16. The Court may proceed in the case notwithstanding a reference to the High Court, or other highest Civil Court of Appeal as aforesaid ; and may pass an order contingent upon the opinion of the High Court, or other Court as aforesaid, on the point referred ;

but no final order for the sale or other disposition of the land in question in the suit, or for the admission or rejection of any claim or objection which shall be before the Court in such suit, shall be passed, until the receipt of the order of the said High Court, or highest Civil Court of Appeal.

Ss. 16 to 18] Act XXIII of 1863 (THE WASTE LANDS (CLAIMS) ACT). 13

(Note).

Scope of section.

This section deals with procedure. 12 C. 279 (283).

U

17. The record of cases disposed of by Courts constituted under this Act shall be deposited amongst the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

Records of cases where to be deposited.

(Note).

Scope of section.

This section deals with procedure. 12 C. 279 (283).

Y

18. No claim to any land, or to compensation or damages in respect of any land, sold or otherwise dealt with on account of Government ¹ as waste land, shall be received after the expiration of three years from the date on which such land shall have been delivered by the Government to the purchaser, or otherwise dealt with.

Limitation as to claims to land sold or dealt with.

If within three years after any lands have been delivered by the Government to the purchaser ² or otherwise dealt with, any claimant or objector shall prefer a claim ³ to the land so delivered, or otherwise dealt with, or an objection to such sale, or to compensation ⁴ or damages in respect thereof, in the Court constituted under this Act for the district in which the land is situate; and shall show good and sufficient reason for not having preferred his claim or objection to the Collector or other officer as aforesaid, within the period limited under section 1 of this Act; such Court shall file the claim or objection, making the claimant or objector plaintiff, and the Collector of the district or other officer as aforesaid (with the like provision as aforesaid if such other officer be the presiding officer of the principal Civil Court of original jurisdiction in the district), the defendant in the suit;

Provision for such claims if preferred within time.

and the foregoing provisions of this Act shall be applicable to the trial and determination of the suit.

The report of the officer employed to give delivery, or to take possession, on the part of Government, of the land sold or otherwise dealt with, shall be conclusive evidence as to the date on which such delivery was made, or possession was taken.

(Note).

N.B.—Down to S. 18, there is no provision for dealing with any claim or objection which has not been submitted to the Collector before the date fixed by advertisement for the sale or other disposition of the land.

12 C. 279 (283).

W

1.—“Sold or otherwise.... waste land.”

Ous on purchaser to show whether lands were waste lands.

- (a) It is very doubtful to state that it is not necessary for the purchaser of waste lands, in order to entitle him to rely upon S. 8 or S. 18, to show that the lands were waste at the time of the purchase. 12 C. 279 (286). **X**
- (b) Throughout the Act, except in one instance, what is spoken of is waste land. The one instance referred to is in S. 18, where the words occur “sold or otherwise dealt with on account of Government as waste lands.” (*Ibid.*) **Y**
- (c) Having regard to the immediate context in which the words occur, and to the connection of that section with the earlier parts of the Act, it is very much doubtful whether these words extend the scope of the Act, and whether the Act applies at all to any lands which are not waste at the date of the sale. (*Ibid.*) **Z**

2.—“Purchaser.”

Purchaser cannot be compelled to give patta to person claiming to be occupant before sale.

A purchaser of land sold as waste land under Act XXIII of 1863 cannot be compelled to grant a pottah to a person alleging himself to have been in occupation of the land before the sale. 7 W.R. 474. **A**

3.—“Prefer a claim.”

Purchaser of waste lands—Person having good title and being in possession—Rights.

- (a) There are no words in the Act declaring either expressly or by necessary implication, that a purchaser of waste lands shall take an absolute title, or that the right of any other person shall be barred, or that any such person shall be disabled from asserting his rights in any way whatever, except in the one case in which the Act itself forbids it; and that is where he is the claimant. There is nothing in the Act to prevent a person, who has a good title and has throughout been in possession, or who has a good title, and at any time succeeds in peaceably getting possession, and is not ousted in a possessory suit, or who, for any other reason, is in the advantageous position of a defendant from defending his rights, notwithstanding any sale which the Government may have professed to make under the Waste Lands Act. (*Ibid.*) **B**
- (b) On the contrary, there are indications, in the Act itself that this distinction was present to the minds of the framers, for by S. 19, the period within which a claim adverse to a sale must be filed begins to run, not from the sale, but from the time when the land has been delivered by the Government to the purchaser. (*Ibid.*) **C**

4.—“Compensation.”

Suit for compensation for land wrongly sold as waste.

- (a) If the claimant has omitted to come in due time to stay the sale and the land has actually been sold, his only remedy is by a suit under S. 18 for compensation making the Collector a defendant. 7 W.R. 474. **D**
- (b) The object of the Waste Land Act is to give a purchaser or lessee of waste land under the Government a clear title to the land itself, the Government holding itself responsible to compensate any person, who may establish a claim to the land within a certain time. (7 W.R. 474, *Appr.*) 12 C. 279. **E**

Ss. 19 to 22] Act XXIII of 1863 (THE WASTE LANDS (CLAIMS) ACT). 15

19. In any case in which the land has been sold, if the Court shall be of opinion that the claim of the claimant is established, the Court shall not award the claimant possession of the land in dispute; but shall order him to receive from the Government Treasury; by way of compensation, a sum equal to the price at which the land was sold, in addition to the costs of suit.

If claim established, possession not to be given, but compensation.

20. If the land shall have been sold subject to any condition or reservation, or shall not have been sold, but shall have been otherwise dealt with on account of the Government, and the Court shall be of opinion that the claim to such land, or the objection of an objector, is established, the Court shall award the claimant or objector to receive such sum, in respect of his interest in such land, as shall be awarded in that behalf under the provisions of Act VI of 1857 ¹ (*for the acquisition of land for public purposes*),

When land sold not absolutely, or not sold, but otherwise dealt with.

and thereupon the Local Government shall proceed under the said Act to obtain an award of the value of such interest.

(Note).

Scope of section.

This section contains some provisions for the case in which the land has been dealt with otherwise than by absolute sale. 12 C. 279 (284). F

I.—“Act VI of 1857.”

N.B.—See now the Land-Acquisition Act, 1894 (1 of 1894), S. 2.

21. An award under any of the provisions of the two last preceding sections shall be in full satisfaction of the claim of the claimant or objector; and shall bar any future claim on his part, in respect to the land in suit resting on the same cause of action, or on a cause of action which existed prior to the date of the sale or other disposition of the land on account of Government.

Award under two last sections to be in full satisfaction.

22. Nothing in this Act shall be held to prevent the Local Government from awarding, to any claimant of waste land sold on account of Government, on proof to the satisfaction of the Local Government of the claim of such claimant (notwithstanding that he may not have preferred his claim either to the Collector or other officer as aforesaid, or to the proper Court constituted under this Act, within the period prescribed by this Act), such amount as compensation for the said land, within the limit as to amount mentioned in section 19 of this Act, if the land have been sold not subject to any condition or reservation, as to such Local Government may seem proper.

Government not barred from awarding compensation for land absolutely sold, though claim be not preferred in time.

16 Act XXIII of 1863 (THE WASTE LANDS (CLAIMS) ACT). [Ss. 22 to 24]

(Note).

Scope of sections 22 & 23.

Ss. 22 & 23 reserve to the Local Government the power of granting compensation, although no claim or objection may have been made within the prescribed period. 12 C. 279 (284). **G**

23. If the land have been sold subject to any condition or reservation, or have been otherwise disposed of, on account of Government, and any claim to such land, or objection to the sale or other disposition of the land, shall be proved to the satisfaction of the Local Government, although not preferred to the Collector or other officer as aforesaid, or to the Court constituted under this Act, within the period prescribed by this Act, the Local Government may award to such claimant or objector such amount as to such Local Government may appear to be the value of the interest of such claimant or objector in such land.

Compensation for land sold subject to condition, if claim proved, though not preferred in time.

(Note).

Scope of sections 22 & 23.

By Ss. 22 and 23 the Government is authorised to award compensation even after the period of limitation in cases in which the claim is proved to its satisfaction. 12 C. 279 (289). **H**

Interpretation-
clause.

Number.

Gender.

24. Unless the contrary appears from the context, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

APPENDIX.

N.B.—The following cases, though not falling under any particular sections of this Act, are collected here for facility of reference, since they all relate to "Waste Lands."

(1) Waste land vested in Ruling power.

In India, as a general rule, the waste lands are vested in the Ruling power. 2 B. 19.

(2) Waste lands—South Canara—Presumption as to Government ownership.

The general presumption in the District of South Canara is in favour of Government ownership of any immemorial waste lands to which no private person can show a title by grant, or by such user and occupation as is inconsistent with the proprietary right of Government. What acts prove such user and occupation must be determined according to the circumstances of each case separately. A man's *warg* was simply the amount of the assessments payable by him for his lands, which were not necessarily all adjacent, but might be situated at a distance from each other and even in different villages. 28 M. 257=15 M.L.J. 147.

(3) Unsettled and unoccupied waste land not belonging to private owner.

Unsettled and unoccupied waste land, not being the property of any private owner must be held to belong to the State. This view is not opposed to the policy of British Government in India, and is in accordance with such policy as appears from the express language of the preamble of Reg. III of 1828. 26 C. 792=3 C.W.N. 695.

(4) Waste land—Presumption.

The fact of land lying waste does not of itself show that no one is in possession, 8 W.R. 422.

(5) Waste land—Possession—Ownership.

Where land is waste, and there is no visible sign of occupation the possession must be taken to go with the right, and the right is *prima facie* in the zemindar of the estate to which the waste land belongs. 22 W.R. 419.

(6) Possession of waste lands—Limitation—Presumption.

There may be such possession of waste lands as to protect a suit from being barred by limitation, and where the question of possession is doubtful, a presumption will arise in favour of the party who proves title. 11 W.R. 267 (268).

(7) Title—Possession, presumption of, from evidence of title—Waste lands.

In disputes as to the right to possession of jungle lands, it is only in cases where neither party has exercised any acts of ownership over the lands in question that the Court may resort to evidence of title, and presume that the party proved to have the title has also possession. 5 C.L.R. 481.

(8) Land emerging from a bhill—Presumption as to possession of owner.

Where lands emerge from a bhill, the possession of the owner is presumed to continue, until the contrary is shown when such lands remain *patit* or waste, whether it be culturable or unculturable. (9 C. 744 and 19 C. 660, R.) 24 C. 256=1 C.W.N. 304.

(9) Uncultivated land—Limitation—Possession.

(a) If adverse possession for a sufficiently long time is proved, the title of a person to uncultivated or jungle land may be barred by limitation in the same manner and to the same extent as in the case of cultivated land; the evidence of possession being the exercise of such acts of ownership as would ordinarily be exercised over property of that nature. 23 W.R. 368.

(b) Adverse possession may be pleaded to bar a claim as regards uncultivated lands in the same manner and to the same extent as regards cultivated lands. 3 W.R. 73.

(10) Grant—Non-mirasi waste land—Power of Collector to make grant—Right of the former occupant.

Where the lands situated in a non-mirasi district is allowed by the puttadar to lie waste, the Collector is competent to make a grant of it to another. Such grantees cannot be ousted by the former occupant. 1 M.H.C. 12.

(11) Allowing to lie waste not abandonment.

A mirasdar who has purchased certain land cannot, by allowing it to lie waste, be considered to have abandoned it so as to entitle the Revenue authorities to grant it to another. 7 M.H.C. R. 98.

(12) Ryotwari lands—Nature of right possessed by ryot in his lands—Right of Government to grant to other ryots lands allowed to lie waste.

In ryotwari lands, the ryot has by immaterial custom and usage an indefeasible right of occupation so long as he pays the Government assessment fixed on the lands; but on his abandoning the lands and ceasing to make the payment, the Government possess the power of granting them to other ryots for purposes of cultivation. 1 M.H.C.R. 407. [R. 2 M.H.C.R. 1.]

(13) Waste-lands—Patta—Rights of mirasdars.

The issue of a patta for the cultivation of waste lands to the mirasdars of the village is in form only an annual settlement; there is nothing in the engagements to indicate the creation or recognition of a permanent right in the mirasdars such as can be determined only in the manner laid down in 7 M.H.C.R. 98. 1 M. 205 (F.B.).

(14) Grant of waste lands—Mortgage—Sale—Construction whether lands sold or mortgaged.

The grantee of certain waste lands in Burma mortgaged them for securing advances taken for the part payment of the purchase money. Subsequently he entered into an arrangement with his creditor for the advance of the whole balance. Then, on the joint application of the grantee and his creditor, an entry was made in the Revenue Register to the effect that the ownership had been transferred from the grantee to the creditor, and endorsements in the same terms on the document of grant. In a suit for redemption brought several years after, *held*, with respect to the question which arose as to whether the transaction was a mortgage or a sale, that, on the true construction of the joint

petition and the orders made thereon, the entry and the endorsements were intended only as a record of the arrangement proposed by the parties and sanctioned by the registering officer; that the intention was not to have an absolute sale; and that the transaction was a mortgage which the plaintiff could redeem. 21 C. 882 (P.C.).

- (15) **Right to use of waste land—Permissive use by tenants—Right of landlord to erect building—Works of permanent character executed by licensee—Easements Act (V of 1882), Ss. 60, 61.**

In a suit by a zamindar to have his right declared to build a house on some waste land in the mouzah, the defendants, who were tenants in the mouzah, resisted the claim, on the ground that they had built wells and water-courses on the land, and had a right also to use it as a threshing-floor and for stacking cow-dung. *Held* that the defendants having acquired no right adverse to the plaintiff as owners, by prescription or otherwise, in the land, their right of use could only be as licensees of the plaintiffs; and although he could not interfere with their right to the well, which were works of a permanent character, and on which the defendants had incurred expenses, he could revoke the license as to the other use claimed of the land, and his claim to build the house should therefore be decreed. 8 A. 64.

- (16) **Rights of pasturage in zamindari waste lands—Right of zamindar to re-claim.**

Where the village *wajib-ul-arz* provided only that the village cattle may graze on waste land, in the same manner as they were in the habit of grazing all along, but contained no understanding or covenant by the zamindar owner of the village not to re-claim or bring under cultivation any land which then was waste land, the mere permission to the villagers to exercise the customary right of pasture over the waste lands cannot take away from the zamindar the power to re-claim such waste lands for cultivation. 19 A. 172 = 17 A.W.N. 35.

- (17) **Free grazing lands set apart by Government for village cattle—Disposal of part of such lands by Government—Extent of right of pasturage in Government waste lands—Relative rights of villagers and Government, how far within Civil Court's jurisdiction.**

Consistently with the course of legislation in the matter, Civil Courts may have jurisdiction to declare that the villagers of a specified village are entitled to rights of free pasturage over Government waste lands within the limits of their village. They cannot, however, go further and enjoin the Collector to pursue any particular course in connection with them, while at all events he is acting *bona fide* in pursuance of the power which the provisions of the Statute confer upon him. 21 B. 684.

- (18) **Waste lands, unassessed—Right of pasture against Government—Presumptive right.**

Where the plaintiffs were granted certain unassessed lands on darkhast, and the defendant obstructed the plaintiffs and set up an immemorial right of pasture and denied the right of Government to grant the lands on darkhast. *Held* that a right of pasture does not exclude the owner's right to the possession and enjoyment of the property over which such right may exist.

Whether, in the case of Government waste, where the owner has no use for the property and is not present on the spot to resist any acts of trifling enjoyment on the part of another, the mere pasturing of cattle by the adjoining ryot would amount to an enjoyment as of right so as to create a prescriptive title. 20 M.L.J. 362=7 M.L.T. 380=M.W.N. (1910) 75=5 Ind. Cas. 853.

(19) Suit by Crown—Cause of action—Burden of proof.

Assuming that the Crown has the right to oust any person who, without its sanction, occupies waste land which has not been appropriated for any public purpose, it cannot, by instituting a suit for a declaration of right or ejectment without specifying a date at which the cause of action arose, compel a defendant to prove possession for 60 years. 9 M. 175.

(20) Suit to establish right to grant of puttah of waste lands—Preferential right of occupancy.

In a suit by A and others, as the mirasdars of a village, to establish their right to the grant of a puttah in respect of certain waste lands of the village as against B and others to whom the said lands had been granted, where the Collector, who was also made a defendant, stated that the Hookumnamah Rules of the District directed that lands should be given to mirasdars on their tendering sufficient security, and that A and others had, on previous occasions, received lands for which offers had been made by others, in consideration of their (A and others) preferential right, but that they had failed to cultivate the lands or pay the assessment in breach of their agreements. *Held* that A and others were entitled to the relief sought for. 4 M.H.C.R. 429.

THE
LOCAL AUTHORITIES LOAN
ACT, 1879.

(ACT XI OF 1879).

(WITH THE CASE-LAW THEREON)

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THE LOCAL AUTHORITIES LOAN ACT, 1879¹. (ACT XI OF 1879.)

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN
COUNCIL.

Received the assent of the Governor-General on the 21st July 1879.

HISTORICAL MEMOIR.

Year.	No of Act.	Name of Act.	How affected.
1871	XXIV	Local Public Works Loans	Rep., Act XI of 1879 ..
1879	XI	Local Authorities Loan	Amended Act XV of 1885 ; 1 of 1905 ; V of 1907 ...

WHEREAS it is expedient to re-enact the Local Public Works Loan Act, 1871, with the amendments hereinafter appearing ;
Preamble. It is hereby enacted as follows :—

(Notes).

1.—“ *Local Authorities Loan Act, 1879.*”

(1) **Statement of Objects and Reasons.**

The———was not published, the bill having been introduced and passed at one sitting ; A

(2) **Proceedings with regard to the bill.**

For———, see Gazette of India, supplement, 1879, p. 873. B

Short title. 1. This Act may be called “ The Local Authorities Loan Act, 1879 :”

Local extent. It extends ¹ to the whole of British India ; and
Commencement. shall come into force upon the passing thereof.

(Notes).

1.—“ *Extends.*”

Places where Act has been declared to be in force.

The Act has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts in the Chutia Nagpur Division, namely :—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, see Gazette of India, 1881, Pt. 1, p. 504. The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894 ; Lohardaga is now called the Ranchi District ; Calcutta Gazette, 1889, Pt. 1, p. 44.

1—"Extends"—(Concluded.)

It has been declared to be in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), S. 4 (1) and Sch. 1,

It has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), S. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899, (III of 1899). **C**

2. The Local Public Works Loan Act, 1871, is hereby repealed. But all applications, declarations, authorizations, attachments, loans and rules made under the said Act shall be deemed to have been made under this Act.

Repeal of Act XXIV of 1871.

3. In this Act, "local authority" ¹ means any body corporate, municipal committee, ² or other persons legally entitled to the control or management of any local or Municipal Fund, or legally entitled to impose any cess, rate, duty or tax upon any persons within any local area ; * * * *

"funds," used with reference to any local authority, includes any local or Municipal Fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority ; and "work" includes a survey whether incidental to any other work or not.

"Funds."

(Notes).**Legislative changes.**

In S. 3 the word "and" before the word "funds" was omitted by section 2 of the Local Authorities Loan (Amendment) Act, 1907 (V of 1907). **D**

By the same enactment after the words "vested in such authority" the following words were inserted, viz., "and work" "includes a survey whether incidental to any other work or not."

1.—"Local authority."**Local authority—Definition.**

"Local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund. [S. 3 (28), General Clauses Act, 1897 (Act X of 1897).] **E**

2.—"Municipal Committee."**Municipal Committee.**

It is not affected by the Ajmere Municipalities Regulation, 1886 (V of 1886), see S. 159. **F**

4. Any local authority desiring to obtain a loan, on the security of its funds or any portion thereof, for the carrying out of any works which it is legally authorized to carry out may, in manner provided by the rules made by the Governor-General in Council under the power hereinafter conferred, apply to the local Government for such loan.

Loans for works may be granted on security of funds.

Power to Governor-General in Council to make rules.

5. The Governor-General in Council may from time to time make rules ¹ consistent with this Act as to—

- (1) the nature of the funds on the security of which loans may be made ;
- (2) the works for which loans may be made ;
- (3) the manner of making applications for loans ;
- (4) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries ;
- (5) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published ;
- (6) the cases in which the local Government may make loans without the previous sanction of the Governor-General in Council, and the cases in which such previous sanction must be obtained ;
- (7) the manner of recording and enforcing the conditions on which such loans are to be made ;
- (8) the manner and time of making loans ;
- (9) the inspection of any works carried out by means of loans ;
- (10) the instalments by which loans shall be re-paid, the interest to be charged on loans, and the manner and time of re-paying loans and of paying the interest thereon ;
- (11) the sum to be charged against the funds which are to form the security for the loan, as costs in effecting the loan ;
- (12) the attachment of such securities, and the manner of disposing of or collecting them ;
- (13) the accounts to be kept in respect of loans ;
and as to all other matters incidental to carrying this Act into effect.

All such rules shall be published in the *Gazette of India*.

(Notes).

1.--" Rules."

1. Rules for the grant of Government loans to Local Authorities.

No. 5565-A., dated the 24th October, 1907.—In exercise of the powers conferred by section 5 of the Local Authorities Loan Act, 1879, the Governor General in Council has made the following rules for the grant of loans to Local Authorities by the Government :

1. These rules shall come into force on the 1st day of November, 1907. On and from that date the rules published with Notification No. 15, dated 1st January, 1889, as subsequently amended, shall be rescinded except as regards loans applied for before these rules come into force,

1.—“ Rules ”—(Continued).

2. In these rules:—

(1) “ the Act ” means the Local Authorities Loan Act, 1879 ;

(2) “ the Local Authority ” means the Local authority applying for or, as the case may be, receiving, or having received the loan ;

(3) “ Loan ” means a loan under the Act.

3. A loan shall not be granted except for a work of public utility—

(a) within the local limits of the area subject to the control of the local authority, or

(b) for the benefit of the inhabitants within those limits.

4. The term of a loan shall not, except with the previous sanction of the Government of India, extend over a period exceeding twenty years.

N.B.—The term should be calculated from the date on which the loan is completely made.

5. In the case of loans for works or in connection with works which are mainly ornamental or convenient, such as a town-hall, public garden, market place, the term shall not except with the previous sanction of the Government of India exceed ten years.

N.B.—The term should be calculated from the date on which the loan is completely made.

6. Without the previous sanction of the Government of India a loan shall not be made at a lower rate of interest than 4 per cent.

7. An application for a loan shall state—

1st—the work for which the loan is required and an estimate of the cost of the entire work or of such part of it as it is proposed to meet from loan funds ;

2nd—the amount which it is proposed to borrow ;

3rd—the fund on the security of which it is proposed to borrow ;

4th—the law under which the said fund is levied, received or held ;

5th—the period for which the loan is required, the number and amount of the instalments, if any, in which it is proposed that the loan shall be taken, the dates proposed for receiving such instalments and the instalments, if any, in which it is proposed to repay the loan ;

6th—the rate of interest at which it is proposed to borrow ;

7th—a detailed account of the revenue and expenditure of the Local Authority for the three last preceding years ;

N.B.—The receipt side of the account should show only ordinary revenue. Receipts from loans or deposits or the investments of sinking funds should be excluded, as well as items of abnormal character, which should be indicated separately when required. On the expenditure side interest on debt and any payments to a sinking fund should be included, but all expenditure from loan funds and re-payment of advances or deposits should be excluded. A full explanation should be given of all important variations in the amounts of revenue and expenditure

8th—all existing prior charges upon the funds of the Local Authority.

8. The Local Government shall cause such inquiry as it thinks necessary or expedient to be made into the statement contained in the application, and into the use and value of the work for which the loan is proposed.

1.—“Rules ”—(Continued).

9. If it appears to the Local Government that the loan ought not to be granted, it shall reject the application.
10. If it appears to the Local Government probable that the loan ought to be granted, it shall cause to be published in the local official Gazette, and otherwise, as it deems fit within the local limits of the area subject to the control of the Local Authority, a copy of the application and such particulars in regard to any enquiry made under Rule 8 as it may think necessary.
11. (1) After the expiry of one month from such application, and after calling for any further information which it may require, and considering any objections which may be preferred, the Local Government may either reject the application, or grant the loans if funds are available from the grant placed at its disposal for the purpose :

Provided that—

- (i) when the sanction of the Government of India is required under rule 4, 5, or 6, or
 - (ii) when the application is made by one of the corporations specified in clause (a) of the Proviso to section 8 of the Act, or by the Rangoon Municipality, the local Government, if it approves the application, shall not itself proceed to sanction it but shall refer it for the orders of the Governor-General in Council.
- (2) If it is not proposed to take the whole of the loan during the current financial year, and if the portion to be taken in future years exceeds one lakh of rupees per annum, the Local Government shall report the proposals to the Government of India.
12. The Local Government shall make such provisions as may seem to be necessary for the proper inspection of all works which are being carried out by means of a loan, and for ascertaining and securing that the loan is duly applied to the work for which it has been made. Every such work and the accounts connected therewith shall be open at all times to the inspection of the Superintending or Executive Engineer in whose division the work is situate and of any person who may be authorised to inspect the accounts of the Local Authority, and of any other person specially authorized by the Local Government in this behalf.
13. If the Local Government considers that the conditions on which a loan was granted have not been fulfilled, or that the Local Authority has failed to comply with any of the requirements of these rules, it may, at any time, order that no further payments shall be made on account of such loan, and recover the amount advanced, with interest thereon, in the manner mentioned in section 6 of the Act.
14. (1) Interest shall be charged yearly or half-yearly, as the Local Government may determine on each loan at the rate agreed upon ; and shall be reckoned and paid on each instalment from the date on which it is received.
- (2) A penal rate of compound interest not less than 6 per cent. per annum shall be payable, at the discretion of the Local Government, upon all overdue instalments of interest or of principal and interest.

1.—“Rules”—(Concluded).

15. The Local Authority, may, at any time, with the previous consent of the Local Government, re-pay the whole or any part of a loan in advance of the period fixed by the conditions of the loan.
16. The cost of any enquiry made under Rule 8, of advertisements published under Rule 10, of inspections made under Rule 12, and of any other proceedings by order of the Local Government or the Governor-General in Council under these rules, shall be determined by the Local Government, and shall be paid by the Local Authority.
17. (1) The accounts of every loan shall be kept by the account officer of the province in which it is made.
(2) The Local Authority shall give to the account officer and the Local Government any information which they may require regarding the expenditure of the loan and regarding its funds.
18. An annual statement of all loans granted under the Act re-payments due and made during the year, and balances outstanding at the beginning and end of the year in each province or under each Local Government shall be prepared by the account officer and submitted to the Government of India through the Local Government which shall add a report of the progress of the work for which a loan has been made. Such statement shall be published in the local official Gazette.

N.B.—Rule 18 is rescinded. See Notification No. 3429-A, dated 1st July, 1910. Gazette of India, 1910, Pt. 1, p. 538.

19. An attachment of any funds under section 6 of the Act shall be made by a notice to the Local Authority prohibiting the collection or management of such funds by the Local Authority, and vesting the administration thereof in such officer as the Local Government may appoint. Such notice shall be published in the local official Gazette and otherwise, as may be directed by the Local Government, within the local limits of the area subject to the control of the Local Authority. The moneys collected or received under such attachment shall be paid into the Government Treasury; and the accounts of money so collected and of the costs of the collection, shall be prepared in such form as the Local Government may from time to time direct. A copy of the accounts shall be delivered to the Local Authority, and published in the local official Gazette.

(See Gazette of India, 1907, Pt. 1, p. 575).

G

II. Rules made under this section and S. 7, for the raising of loans by local authorities in the open market.

See Gazette of India, 1907, Pt. 1, p. 577.

H

N.B.—The said rules are printed under S. 7, *infra*.

6. If any loan made under such rules, or any interest or costs due in respect thereof, is or are not re-paid according to the conditions of the loan, the local Government may attach the funds on the security of which the loan was made. After such attachment, no person except an officer appointed in this behalf by the local Government shall in any way

Remedy by attachment if loan not re-paid.

deal with the attached funds; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interest and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings:

Attachment not to defeat prior charges legally made. Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

(Notes).

Scope and applicability of Ss. 6 and 7.

Ss. 6 and 7 of this Act apply to money borrowed under the Local Authorities' (Emergency) Loans Act, 1897 (XII of 1897) [See S. 4 of that Act]. I

Local Government may authorize parties to borrow from private persons under this Act. 7. The Local Government, with the previous sanction of the Governor-General in Council, may authorize¹ any local authority which might, under the provisions hereinbefore contained, have borrowed money for any work upon the security of its funds to borrow money from any other person for such work upon such security; and, if any such loan or the interest thereon is not duly paid, the local Government shall, upon the application of the lender, attach such funds for his benefit in manner provided by Section 6.

Power to make rules in regard to such loans. The Governor-General in Council may, in respect of loans to be taken under this section, exercise the power conferred by Section 5, so far as the same may be applicable to the case of such loans.

(Notes).

Scope and applicability of section.

Ss. 6 and 7 of this Act apply to money borrowed under the Local Authorities' (Emergency) Loans Act, 1897 (XII of 1897), see S. 4 of that Act. J

1. — "The Local Government... authorize.

1. Rules for raising of loans by Local Authorities in open market.

No. 6566-A, dated the 24th October, 1907.—In exercise of the powers conferred by sections 5 and 7 of the Local Authorities Loan Act, 1879, the Governor-General in Council has made the following rules for the raising of loans by Local Authorities in the open market:

1. These rules shall come into force on the 1st day of November, 1907. On and from that date the rules published with the Notification No. 16, dated the 1st January, 1889, as subsequently amended shall be rescinded, except as regards loans applied for before these rules come into force.

1—"The Local Government....authorize"—(Continued).**1.—Rules for raising of loans by Local Authorities in open market—(Contd.)****2. In these rules—**

- (1) "the Act" means the Local Authorities Loan Act, 1879,
- (2) "the Local Authority" means the Local Authority applying for permission to raise, or as the case may be, raising or having raised the loan; and
- (3) "Loan" means a loan under the Act.

3. Every loan shall be defined in rupee currency unless the Local Government, with the previous sanction of the Governor-General in Council, directs that any particular loan shall be defined in sterling currency.

4. A loan shall not be raised except for works of public utility:

- (a) within the local limits of the area subject to the control of the Local Authority, or
- (b) for the benefit of the inhabitants within those limits.

5. The Governor-General in Council shall determine, in each case, the period within which the loan shall be re-paid except as provided in the proviso to rule 10.

N.B.—Substituted by Notification No. 6215-A, dated 30th October, 1908, see Gazette of India, 1910, Pt. 1, p. 971.

6. When it is desired to obtain the authorization of the Government to the raising of a loan under section 7 of the Act, a statement shall be submitted to the Local Government showing:

1st—the work for which the loan is required, and an estimate of the cost of the entire work or of such part of it as it is proposed to carry out from loan funds;

2nd—the amount which it is proposed to borrow;

3rd—the fund on the security of which it is proposed to borrow;

4th—the law under which the said fund is levied, received or held;

5th—the dates within which the money is to be raised, and when it is proposed to raise the loan in instalments, the amount of each instalment, the dates within which the first instalment is to be raised, and the years in which it is intended to raise the other instalments;

6th—the rate of interest at which it is proposed to borrow;

7th—the term of years for which the money is to be borrowed, the instalments in which it is to be re-paid, or the amount of the sinking fund provided for its re-payment, and the rate of interest at which the improvement of such sinking fund is to be calculated;

8th—a detailed account of the revenue and expenditure of the Local Authority for the three last preceding years;

N.B.—The receipt side of the account should show only ordinary revenue. Receipts from loans or deposits or the investments of sinking funds should be excluded, as well as items of abnormal character, which should be indicated separately when required. On the expenditure side interest on debt and payments to a sinking fund should be included and all expenditure from loan funds and re-payment of advances or deposits should be excluded. A full explanation should be given of all important variations in the amounts of revenue and expenditure.

9th—all existing prior charges upon the funds of the Local Authority.

1.—“The Local Government...authorize”—(Continued).

1.—Rules for raising of loans by Local Authorities in open market—(Contd.)

7. The Local Government shall cause such enquiry as it thinks necessary or expedient to be made into the statements contained in the application and into the use and value of the work for which the loan is proposed.
8. If it appears to the Local Government that the loan ought not to be raised, it shall reject the application.
9. If it appears to the Local Government probable that the loan ought to be raised, it shall cause to be published in the local official Gazette, and otherwise, as it deems fit within the local limits of the area subject to the control of the Local Authority, a copy of the application and such particulars in regard to any enquiry made under Rule 7 as it may think necessary.
10. After the expiry of one month from such publication, and after calling for any further information which it may require, and considering any objections which may be preferred, the Local Government may either reject the application or refer it for the orders of the Governor-General in Council: Provided that, if the loan is for an amount not exceeding 5 lakhs of rupees, and is to be re-paid within a period not exceeding thirty years, the Local Government may sanction the loan without reference to the Government of India.

N.B.—Substituted by Notification No. 6215-A., dated 30th October, 1908, see Gazette of India, 1908, Pt. 1, p. 971.

11. When a loan has been sanctioned by the Governor-General in Council, the Local Authority shall not, without the previous approval of the Government of India, vary the dates within which the raising of the loan, or of the first instalment of it, has been sanctioned.

If such a loan is raised by instalments, the dates within which each further instalment is to be raised shall be reported for the previous approval of the Government of India before it is put upon the market.

N.B.—The words “if such a loan,” were substituted for the words, “if the loan,” by Notification No. 6215-A., dated 30th October 1908, see Gazette of India, 1908, Pt. 1, p. 971.

12. The Local Government shall make such provisions as may seem to be necessary for the proper inspection of all works which are being carried out by means of a loan, and for ascertaining and securing that the loan is duly applied to the work for which it has been made. Every such work and the accounts connected therewith shall be open at all times to the inspection of the Superintending or Executive Engineer, in whose division the work is situate, and of any person who may be authorized to inspect the accounts of the Local Authority, and of any other person specially authorized by the Local Government in this behalf.

13. The cost of any enquiry made under Rule 7 of advertisement published under Rule 9, of inspections made under Rule 12 and of any other proceedings by order of the Local Government or the Governor-General in Council under these rules, shall be determined by the Local Government and shall be paid by the Local Authority.

14. If a loan is not re-payable by annuities or annual drawings the Local Authority shall out of its income pay yearly or half-yearly, into a sinking fund a sum which, accumulating at such rate of compound interest as

I.—“The Local Government....authorize” —(Concluded).**1.—Rules for raising of loans by Local Authorities in open market—(Old).**

the authority sanctioning the loan may fix, will be sufficient to secure the liquidation of the loan within the term fixed for its re-payment. The Local Authority shall submit the accounts of its sinking fund to the Accountant-General and shall at once make good from its revenues any amount by which he may certify that the fund falls short of what it ought to contain.

N.B.—The words “the authority sanctioning the loan” were substituted for the words “the Government of India” by Notification No. 6215-A., dated 30th October, 1908. See Gazette of India, 1908, Pt. 1, p. 971.

15. The Local Authority shall give to the account officer and the Local Government any information which they may require regarding the expenditure of the loan, and regarding its funds.

16. An attachment of any funds under section 6 of the Act shall be made by a notice to the Local Authority prohibiting the collection or management of such funds by the Local Authority, and vesting the administration thereof in such officer as the Local Government may appoint. Such notice shall be published in the local official Gazette, and otherwise, as may be directed by the Local Government, within the local limits of the area subject to the control of the local Authority. The moneys collected or received under such attachment shall be paid to the lender, and the accounts of moneys so collected and of the cost of collection, shall be prepared in such form as the Local Government may from time to time direct. A copy of the accounts shall be delivered to the Local Authority, and published in the local official Gazette.

(See Gazette of India, 1907, Pt. 1, p. 577.)

K

II. Conditions on which local authorities are allowed to issue sterling loans.**RESOLUTION.****ACCOUNTS AND FINANCE.****LOANS.**

Calcutta, the 15th December, 1910.

No. 6621-A.—The conditions on which local authorities are allowed to issue sterling loans were originally explained in the Resolution in this Department, No. 4119-A., dated the 9th July, 1908. Since then, various instructions on the subject have been issued, from time to time, by the Government of India, for the guidance of local bodies. Recently the Secretary of State has communicated further orders and suggestions in regard both to regular loans and to the issue of short-term bills in sterling. The Government of India, therefore, consider it desirable to recapitulate and amplify the existing directions on the subject.

2. The *general principles* which govern the raising of sterling loans by local bodies are these—

(1) Borrowing in sterling requires the previous sanction of the Secretary of State.

(2) Application for permission to issue such loans will be entertained only in cases in which there is a reasonable prospect of the money being raised

1—"The Local Government....authorize"—(Continued).

11.—Conditions on which local authorities are allowed to issue sterling loans—(Continued).

at a rate of interest not exceeding 4 per cent. and at a price not appreciably below par, and in which it does not appear probable that the issue could be made in India except on terms appreciably less favourable to the local body.

- (3) Local bodies borrowing in sterling must make their own arrangements for bringing the capital raised to India and for remitting the interest to the holders of the stock.

3. The *special conditions* precedent to the raising of sterling loans are as follows :—

- (4) An application for permission to float a sterling loan must be submitted through the local Government to the Government of India in sufficient time to allow of the necessary reference to the Secretary of State. Ordinarily speaking, it is advisable that the application should be made a month before the loan is required.

- (5) In forwarding the application to the Government of India, the Local Government will furnish information on the points specified in paragraph 6 of the Notification of the Government of India, Accounts and Finance, No. 6566-A., dated 24th October 1907, and will state its opinion as to the desirability or otherwise of sanctioning the loan.

- (6) The date or approximate date of issue, and, if the loan is to be issued through a Bank or firm, the name of the Bank or firm must be specified in the application.

4. The attention of the Local Governments and local authorities is drawn to the following supplementary instructions and suggestions on the subject of sterling loans :—

- (7) The nature of the issue, the price paid by the public, the net price received by the local body, and the commission, if any, and other expenses connected with the issue, should be reported by the local body confidentially through the Local Government to the Government of India, for transmission to the Secretary of State, as soon as practicable.

- (8) If a Bank or firm has issued the loan, it should be furnished with a certified copy of the Government order conveying sanction to the raising of the money and authorising the form of the loan. Without this, a quotation on the London Stock Exchange cannot be obtained.

- (9) The first loan of any denomination brought out by a local body should be offered to competitive tender. Only Banks or firms of good standing should be invited to tender, a condition which is specially important in view of the advantage of being able to make subsequent issues through the original issuing house. The right of ejecting any tender, or all, should be reserved in all cases and should be exercised when the conditions in 2 (3) above are not satisfied. When the first issue has been officially quoted on the London Stock Exchange, there will ordinarily be no objection, in the case of subsequent issues, to the local body arranging terms with the original issuing house without inviting competitive tenders, provided always that the general conditions of the market justify an issue at the same nominal rate of

1.—“ *The Local Government....authorize*”—(Concluded).

11.—Conditions on which local authorities are allowed to issue sterling loans—(Concluded).

interest. In such cases, the proposed terms will require the previous sanction of the Secretary of State and should be reported through the usual channels.

(10) When several successive issues are made by the same local body at short intervals, it will usually be advantageous that the latter loans should rank *pari passu* with the first issue. When therefore a succession of loans re-payable in 30 years is in contemplation, the Government of India will have no objection to the currency of the first issue being fixed at 35 years, on condition that any further loans issued during the following ten years shall be re-payable on the same date.

5. When a local body desires to obtain purely temporary accommodation in England, otherwise than by an advance from its banker, the following procedure shall ordinarily be adopted:—

(11) The local body should make a public issue of bills in its own name expressed to be payable at a specified date by itself to the holders. Sanction to such issues should be applied for in the same manner and with the same particulars *mutatis mutandis* as in the case of regular sterling loans.

6. The Governor-General in Council wishes to invite the careful attention of all Local Governments and local authorities to the instructions and advice conveyed above.

Ordered that the Resolution be published in the Gazette of India for general information. L

8. Except as provided by this Act and the rules made hereunder, no local authority shall for any purpose borrow money upon or otherwise charge its funds; and any contract otherwise made for that purpose after the passing of this Act shall be void :

Loans not to be effected except under this Act.

Provided that nothing herein contained shall be deemed—

- (a) to preclude the Municipality of Calcutta, Madras or Bombay or the Trustees of the Port of Bombay or Karachi, or the Commissioners for making improvements in the Port of Calcutta, or any like body hereafter created for the Port of Madras or the Commissioners for the Port of Rangoon, from exercising the borrowing powers conferred on them by any special enactment ¹ now or hereafter in force; or
- (b) to preclude any other local authority from exercising the borrowing power (if any) conferred on it by any such enactment with a view to raising money for any purpose other than the carrying out of works; or
- (c) to affect the power conferred on any local authority by any such enactment to charge its funds by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied.

(Note).

Legislative changes.

In clause (a) of the proviso to S. 8 after the words "Port of Bombay" the words "or Karachi" were inserted by S. 3, Act V of 1907.

In the same clause after the words "Port of Madras" the words "or the Commissioners for the Port of Rangoon" were inserted by Act I of 1905.

The words "or (c) to affect—applied" after clause (b) of the proviso to this section were inserted by the Local Authorities Loan Act (1879), Amendment Act, 1885 (XV of 1885). **M**

9. The Secretary of State in Council shall be entitled to the remedy mentioned in Section 6 for the recovery of any money lent by him to any local authority before the fifth day of September 1871, and the interest due on such money; and the Governor-General in Council or the Local Government may declare that any person

Application of Act to loans existing previous to the fifth of September 1871.

who before the said fifth day of September 1871, has lent money to any local authority shall be entitled to the said remedy for the recovery of such money, or of the interest due thereon.

1.—"Special enactment."

Special enactment.

As to—

- (1) the Municipality of Calcutta, see Chap. X of the Calcutta Municipal Act, 1899 (Ben. Act III of 1899).
- (2) City of Bombay, see City of Bombay Municipal Act, 1888 (III of 1888), Ss. 106—110.
- (3) City of Madras, see Madras City Municipal Act, 1904 (Mad. Act III of 1904), Chap. VIII.
- (4) Port of Bombay, see Bombay Port Trust Act, 1879 (Bom. Act VI of 1879), Ss. 40—42.
- (5) Port of Karachi, see the Karachi Port Trust Act, 1886 (Bom. Act VI of 1886).
- (6) Calcutta Port Commissioners, see Calcutta Port Act, 1890 (Ben. Act III of 1890), Ss. 18—27.
- (7) Port of Madras, see Madras Port Trust Act, 1905 (Mad. Act II of 1905), Chap. VII
- (8) Port of Rangoon, see the Rangoon Port Act, 1905 (Burma Act IV of 1905), Chap. VI. **N**

THE
Agriculturists' Loans Act, 1884.

(ACT XII OF 1884).

(WITH THE CASE-LAW THEREON)

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THE AGRICULTURISTS' LOANS ACT, 1884. (ACT XII OF 1884¹)

(Passed on the 24th July, 1884.)

HISTORICAL MEMOIR.

Years.	No. of Act.	Name of Act.	How affected.
1879	X	Northern India Takkavi Act	Rep. by Act XII of 1884 ...
1880	XV	Bombay Revenue Jurisdiction Act.	Rep. in part by Act XII of 1884 ...
1884	XII	Agriculturists' Loans Act.	Amended, Act VIII of 1906, S. 6 ...

An Act to amend and provide for the extension of the Northern India Takkavi Act, 1879.

Preamble. X of 1879. WHEREAS it is expedient to amend the Northern India Takkavi Act, 1879, and provide for its extension to any part of British India; It is hereby enacted as follows :—

(Notes).

I.—“ Act XII of 1884.”

(1) Statement of Objects and Reasons.

For—, see Gazette of India, 1894. Pt. V, p. 2.

A

(2) Proceedings in Council.

For—, see Gazette of India, Supplement, pp. 41, 165 and 1130.

B

Short title. 1. (1) This Act may be called the Agriculturists' Loans Act, 1884; and

Commencement. (2) It shall come into force on the first day of August, 1884.

Local extent. 2. (1) This section and section 3 extend to the whole of British India.

(2) The rest of this Act extends in the first instance only to the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmere.

2 Act XII of 1884 (THE AGRICULTURISTS' LOANS ACT). [Ss. 2 to 4]

(3) But any other Local Government may, from time to time, by notification in the official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration ¹.

(Notes).

1.—“Local Government..... Administration.”

(1) Act extended.

Act XII of 1884 has by notification been extended to—

The Lower Province of Bengal .. See Calcutta Gazette, 1885, Pt. 1, p. 555.

The Madras Presidency .. See Fort St. George Gazette, 1886, Pt. 1, p. 138.

The Santhal Parganas .. See Calcutta Gazette, 1885, Pt. 1, p. 905.

The Province of Coorg .. See Coorg District Gazette, 1887, Pt. 1, p. 670. C

(2) Places where Act has been declared to be in force.

The Act has been declared in force in the whole of Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898). S. 2 of the Act was previously declared in force by Notification under S. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), see Burma Gazette, 1896, Pt. 1, p. 112, and under that section, Ss. 4, 5 and 6 of the Act were extended there, see *ibid.*, p. 121. C-1

It has been declared in force in the Angul District by Notification under S. 3

(2) of the Angul District Regulations, 1894, see Calcutta Gazette, 1896 Pt. 1, p. 1231. D

3. (1) On and from the day on which this Act comes into force, the Northern India Takkavi Act, 1879, and sections 4 and 5 of the Bombay Revenue Jurisdiction Act, 1880, shall, except as regards the recovery of advances made before this Act comes into force and of the interest thereon, be repealed.

X of 1879.

Repeal of Act X of 1879, and sections 4 and 5 of Act XV of 1880.

(2) All rules made under those Acts shall be deemed to be made under this Act.

4. (1) The Local Government may, from time to time, subject to the control of the Governor-General in Council, make rules¹ as to loans to be made to owners and occupiers of arable land for the relief of distress, the purchase of seed or cattle or any other purpose not specified in the Land Improvement XIX of 1883, Loans Act, 1883, but connected with agricultural objects.

(2) All such rules shall be published in the local official Gazette.

(Notes).

Legislative Changes.

In section 4 (1) the words “*subject to the control*” were substituted for the words “*with the previous sanction*”—see S. 6 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (VIII of 1906). E

1.—“The Local Government.....rules.”

1. Ajmere-Merwara.

Rules under this Power.

For—see Ajmere Rules and Orders.

F

S. 4] Act XII of 1884 (THE AGRICULTURISTS' LOANS ACT). 3

1.—“The Local Government....rules”—(Continued).

2. - Andaman and Nicobar Islands.

Rules under this Power.

For—see Andaman and Nicobar Gazette, 1907, Pt. 1, p. 186 **G**

3.—Assam.

Rules under this power.

For—see Assam Gazette, 1898, Pt. II, p. 244. **H**

4.—Bengal.

Rules under this power.

For—see Calcutta Gazette, 1908, Pt. 1, p. 560. **I**

5.—Bombay.

Rules under this power.

For—see Bombay List of Local Rules and Orders, Bombay Gazette, 1900, Pt. 1, pp. 967, 1898; *ibid*, 1901, Pt. 1, p. 1866. **J**

6.—Burma.

Rules under this power.

For—see Burma Gazette, 1907, Pt. 1, p. 1021. **K**

7.—Central Provinces.

Rules under this power.

For—see Central Provinces Gazette, 1908, Pt. 3, p. 563. **L**

8.—Coorg.

Rules under this power.

For—see Coorg District Gazette, 1908, Pt. 1, p. 74. **M**

9.—Madras.

Rules under this power.

For—see Fort St. George Gazette, 1897, Pt. 1, p. 1322. **N**

10.—United Provinces of Agra and Oudh.

Rules under this power..

For—see United Provinces List of Local Rules and Orders. **O**

11.—Punjab.

RULES UNDER THE AGRICULTURISTS' LOANS ACT, 1884.

1. Officers who may grant loans.

Within the limits of the funds allotted to them for the purpose the following officers are empowered to grant loans;—Tahsildars.....up to Rs. 100 for cattle and Rs. 20 for seed.

Assistant and Extra Assistant Commissioners.....up to Rs. 300.

Collectors.....without limit.

Officers subordinate to the Collector will exercise these powers only when permitted to do so by the Collector.

The limits apply to the amounts which may be granted in any individual case. Commissioners may, on the recommendation of the Collector, invest selected Naib-Tahsildars with the powers of a Tahsildar, and selected Tahsildars with the powers of an Extra Assistant Commissioner as regards the granting of loans.

1.—“The Local Government...rules”—(Concluded)**11.—Punjab—(Concluded).**

In time of famine it may be necessary to enlarge the powers of the officers named, and this may be done by the Commissioner, subject to a report to the Financial Commissioner. **P**

2. Interest.

(i) Interest will be charged at the rate of $6\frac{1}{2}$ per cent. per annum, unless the Local Government has, by special order, sanctioned a lower rate of interest.

(ii) Penal interest will not be charged on instalments which have been suspended by order of competent authority, but in other cases will ordinarily be charged at $6\frac{1}{2}$ per cent. per annum, simple interest, on the total of the overdue instalment, when the delay exceeds fifteen days. Compound interest will in no case be charged, and the Collector may remit or reduce the penal interest when he is satisfied that the failure is due to the inability to pay or that the levy of such interest would be productive of hardship. **Q**

3. Security.

The officer making the grant may at his discretion require the grantee to produce some person who will become surety for the re-payment of the loan with interest, where charged. **R**

4. Security.

The borrower should be required to sign on the order of payment an agreement in a form prescribed, and should be given a copy of this agreement. **S**

5. Dates of payment of instalments.

The dates for payment of instalments should usually be the dates fixed for the payment at each harvest of the first instalment of the land revenue. **T**

6. Inspection of works.

All works for which advances are made by instalments should be inspected and reported on or before each instalment subsequent to the first is paid. In the case of all such works no instalment subsequent to the first should be paid until a competent officer is satisfied that the loan is being properly applied. **U**

7. Suspension.

Instalments may be suspended by order and at the discretion of the Collector on proof of failure of crops or other exceptional calamity. The Collector should report the suspension to the Commissioner, who should satisfy himself as to the propriety of the action taken, and may, if necessary, cancel or modify the Collector's order. In all cases formal orders of suspension should be recorded. **V**

8. Remission.

When any portion of a loan under these rules is found to be irrecoverable, or when from any special cause it appears that the loan ought not to be recovered, a special report should be made to the Commissioner of the division, who has power to grant remission up to a limit of Rs. 500 in any one case. If the amount proposed for remission exceeds Rs. 500, the Commissioner has power to sanction remissions without limit. **W**

(See Punjab Government Notification No. 285, dated 13th August, 1910).

6. Every loan made in accordance with such rules, all interests (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable ¹ from the person to whom the loan was made, or from any person who has become surety for the re-payment thereof, as if they were arrears of land-revenue or costs incurred in recovering the same due by the person to whom the loan was made or by his surety.

(Notes).

1.—“ Every loan . . . recoverable . ”

(1) Scope of section—*Takkavi* advances—Recovery.

(a) S. 5 of Act XII of 1884 provides that every loan made under its provisions with all interests, (if any) chargeable thereon and the costs (if any) incurred in recovery the same shall be recoverable as if they were arrears of land revenue. 6 C.W.N. 484 (486). X

(b) Such loans were known in the Regulations and the older Acts as *takkavi*. (*Ibid*). Y

(c) Act XI of 1859 (sec. 5) and Act VII (B.C.) of 1868 (sec. 1) made reference to *takkavi* as revenue within the meaning of those Acts and recoverable as such, and it would seem that the Government could have recourse to those Acts for recovery of *takkavi* advances. (*Ibid*). Z

(2) Mortgage—Public Demands Recovery Act (VII of 1880, and 1 of 1895, B.C.), effect of sale under—Priority

Where a property, which was hypothecated to Government under Act XII of 1884 by Defendant No. 1, was sold in execution of a certificate under the Public Demands Recovery Act and purchased by Defendant No. 3, and subsequently Plaintiff brought a suit to enforce a mortgage of the said property on a bond executed by Defendant No. 1.

Held—That Plaintiff was entitled to obtain a decree and that Defendant No. 3 did not acquire by the purchase anything but the judgment debtor's right, title and interest in the property at the date of the service of notice under S. 10 of the Public Demands Recovery Act. 6 C.W.N. 485. A

(3) Sale of house in default of payment of *takkavi* advance—Effect of prior incumbrance.

Where a house on which there existed a prior incumbrance was sold for default in payment of a *takkavi* advance made by Government on the security of the house, held that such sale could not avoid the prior incumbrance. 22 A. 321=20 A.W.N. 87. B

(4) Ex-proprietary tenants mortgaging trees to Government for *takkavi* advances—Relinquishment of their rights to zemindar—Right of Government.

Ex-proprietary tenants who have taken *takkavi* advances from Government by hypothecating certain trees existing on their holding, cannot, by relinquishing the holding to the zemindar defeat the interests of Government under the hypothecation. If the loan is not paid and the trees are sold to a third person the purchaser's right cannot be defeated by such relinquishment. 26 A. 540=A.W.N. (1904), 101=1 A.L.J. 261. (24 A. 538, F.). C

6. When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed, marked, or sealed by each of them or his agent duly authorized in this behalf and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

Liability of joint
borrowers as among
themselves.

THE
LAND IMPROVEMENT LOANS
ACT, 1883.

(ACT XIX OF 1883).

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

PUBLISHED BY
T. A. VENKASAWMY ROW
AND
T. S. KRISHNASAWMY ROW

*Proprietors, The Law Printing House, Madras and The Lawyer's
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THE LAND IMPROVEMENT LOANS ACT, 1883. (ACT XIX OF 1883¹).

(*Passed on the 12th October, 1883*).

HISTORICAL MEMOIR.

Years.	No. of Act.	Name of Act.	How affected.
1871	XXVI	Land improvement ...	Rep. Act XIX of 1883.
1876	XXI	Amending Act XXVI of 1871 ...	Do.
1883	XIX	The Land Improvement Loans ...	Rep. in part, Act XII of 1891.
...	...	.....	Amended, Act XVII of 1899.
...	...	.....	„ Act VIII of 1906

An Act to consolidate and amend the law relating to loans of money
by the Government for agricultural improvements².

WHEREAS it is expedient to consolidate and amend the law relating to loans of money by the Government for agricultural improvements ; It is hereby enacted as follows :—

(Notes).

I.—“ Act XIX of 1883.”

(1) Statement of Objects and Reasons.

For the—see Gazette of India, 1884, Pt. V, p. 954 ;

A

(2) Report of the Select Committee.

For—see Gazette of India, 1883, Supplement, p. 1296.

B

(3) Proceedings in Council.

For—, see Gazette of India, 1882, supplement, pp. 1491 and 1697 ; Gazette of India, 1883, supplement, p. 2071.

C

“ Agricultural improvements.”

(4) Instruments exempted from stamp duty.

Instruments executed by persons taking loans, or by their sureties, as security for the re-payment of such loans, are exempted from stamp-duty—see The Indian Stamp Act, 1899, Sch. I, Art. 40, Exemption (1), and Notification under S. 9, General Statutory Rules and Orders and S. 2 (2) of this Act.

D

Short title,

1. (1) This Act may be called the Land Improvement Loans Act, 1883.

Act XIX of 1883 (THE LAND IMPROVEMENT LOANS ACT). [S. 1

(2) It extends to the whole of British India, but shall not come into force in any part of British India until such date as the Local Government, * * * * * may, by notification in the local official Gazette, appoint in this behalf.¹

Local extent.
Commencement.

(Notes).

Legislative changes.

In section (1), sub-section (2), the words "with the previous sanction of the Governor-General in Council" were repealed by S. 2 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (VIII of 1906). E

1— "But shall not come into force..... in this behalf."

(1) Act XIX of 1883 came into force——— in,

(i) The Lower Provinces of Bengal from 1st December, 1884. ...	See Calcutta Gazette	1884, Pt. 1, p. 1187
(ii) The Punjab from 1st June, 1885. ...	Punjab	1885, Pt. 1, p. 378
(iii) Lower Burma from 19th September, 1885. ...	Burma	1885, Pt. 1, p. 306
(iv) The Central Provinces, see Notification of 9th February, 1899. ...	Central Provinces	1899, Pt. III, p. 30.
(v) The Madras Presidency from 1st July, 1886. ...	Fort St. George.	1886, Pt. 1, p. 547
(vi) The Bombay Presidency (except Aden and Perim) from 1st April 1886. ...	Bombay Government	1886, Pt. 1, p. 200.
(vii) The Province of Agra, from 1st January, 1886. ...	N.W.P. and Oudh Gazette,	1885, Pt. 1, p. 529
(viii) Oudh from 1st January, 1886. ...	Oudh	1885, Pt. 1, p. 541
(ix) Coorg from 1st January, 1887	Coorg District	1887, Pt. 1, p. 658
(x) Assam from 1st June, 1891. ...	Assam	1891, Pt. II, p. 193 F

(2) Act extended.

It has been extended by Notification under Section 5 of the Scheduled Districts Act 1874 (XIV of 1874) to Ajmere-Merwara—See Gazette of India, 1886, Pt. II, p. 157. F 1

It has been extended to the Angul District by Notification under Section 5 of the Angul District Regulation, 1894 (I of 1894)—see Calcutta Gazette, 1907, Pt. 1, p. 2077. G

(3) Act declared to be in force.

It has been declared in force in —

the Santhal Parganas by the Santhal Parganas Settlement Regulation, 1872 (III of 1872), S. 3 as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899).

Upper Burma generally (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), S. 6; see the Burma Laws Act, 1898 (XIII of 1898). H

2. (1) The Land Improvement Act, 1871, and Act XXI of 1876 (*An Act to amend the Land Improvement Act, XXVI of 1871*), shall, except as regards the recovery of advances, made before this Act comes into force and costs incurred by the Government in respect of such advances, be repealed.

Acts XXVI of 1871
and XXI of 1876
repealed.

(2) When in any Act, Regulation or Notification passed or issued before this Act comes into force, reference is made to either of those Acts, the reference shall, so far as may be practicable, be read as applying to this Act or the corresponding part of this Act.

3. In this Act, "Collector" means the Collector of Land-Revenue of a district, or the Deputy Commissioner, or any officer empowered by the Local Government by name or by virtue of his office to discharge the functions of a Collector ¹ under this Act.

"Collector" defined.

(Notes).

1 — "Collector."

(1) Collector—Meaning.

"Collector" shall mean, in a Presidency-town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the chief officer in charge of the revenue-administration of a district. [S. 3 (10), General Clauses Act, 1877.]

(2) Officer empowered in Sind.

For——— see Bombay Gazette, 1901, Pt 1, p 1094.

4. (1) Subject to such rules as may be made under section 10, loans may be granted under this Act, by such officer as may, from time to time, be empowered in this behalf by the Local Government, for the purpose of making any improvement, to any person having a right to make that improvement, or, with the consent of that person, to any other person.

Purposes for which
loans may be granted
under this Act.

(2) "Improvement" means any work which adds to the letting value of land, and includes the following, namely:—

(a) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(b) the preparation of land for irrigation,

(c) the drainage, re-clamation from rivers or other waters, or protection from floods or from erosion or other damage by water, of land used for agricultural purposes or waste-land which is culturable;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

4 **Act XIX of 1883 (THE LAND IMPROVEMENT LOANS ACT). [Ss. 4 to 6**

(e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto ; and

(f) such other works as the Local Government, * * *
* * * , may, from time to time, by notification in the local official Gazette, declare to be improvements for the purposes of this Act.

(Note).

Legislative Changes.

In section 4, sub-section (2), Clause (f), the words "with the previous sanction of the Governor-General in Council" were repealed by the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (VIII of 1906), S. 2. **K**

5. (1) When an application for a loan is made under this Act, the officer to whom the application is made may, if it is, in his opinion, expedient that public notice be given of the application, publish a notice, in such manner as the Local Government ¹ may, from time to time, direct, calling upon all persons objecting to the loan to appear before him at a time and place fixed therein and submit their objections.

(2) The officer shall consider every objection submitted under sub-section (1), and make an order in writing either admitting or overruling it :

Provided that, when the question raised by an objection is, in the opinion of the officer, one of such a nature that it cannot be satisfactorily decided except by a Civil Court, he shall postpone his proceedings on the application until the question has been so decided.

(Notes).

I.—"Notice.....Local Government."

I.—Bombay.

Notification directing the manner in which notices issued under the section shall be published.

See, Notification No. 1691-B, dated 3rd March, 1886, Bombay Government Gazette, 1886, Pt. 1, p. 204 ; see also Bombay List of Local Rules and Orders. **L**

II.—Burma.

Notifications making such direction.

For ———, see Burma Laws List, Ed., 1897, p. 175. **M**

6. (1) Every loan granted under this Act shall be made re-payable by instalments (in the form of an annuity or otherwise) within such period from the date of the actual advance of the loan, or, when the loan is advanced in instalments, from the date of the advance of the last instalment actually paid as may, from time to time, be fixed by the rules made under this Act.

(2) The period fixed as aforesaid shall not ordinarily exceed thirty-five years.

(3) The Local Government * * * , in making *
* * the rules fixing the period, shall, in considering whether the period should extend to thirty-five years, or whether it should extend beyond thirty-five years, have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by the work.

(Notes).

Legislative changes.

(i) The words "*from the date of the advance of the last instalment actually paid*" were substituted for the word "*from the date of the actual advance of the last instalment*" by S. 2 of the Land Improvement Loans (Amendment) Act, 1899 (XVIII of 1899). They are by that enactment to be deemed to have been substituted with effect from the commencement of Act XIX of 1883.

(ii) In S. 6, sub-S. (3) of this Act the words "*and Governor-General in Council*" and the words "*and sanctioning*" were omitted by S. 3 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (VIII of 1906). **N**

7. (1) Subject to such rules as may be made under section 10, all loans granted under this Act, all interest (if any) chargeable (thereon) and costs (if any) incurred in making the same, shall, when they become due, be recoverable by the Collector in all or any of the following modes, namely :—

- (a) from the borrower—as if they were arrears of land-revenue due by him ;
- (b) from his surety (if any)—as if they were arrears of land-revenue due by him ;
- (c) out of the land for the benefit of which the loan has been granted—as if they were arrears of land-revenue due in respect of that land ;
- (d) out of the property comprised in the collateral security (if any)—according to the procedure for the realization of land-revenue by the sale of immoveable property other than the land on which that revenue is due :

Provided that no proceeding in respect of any land under clause (c) shall affect any interest in that land which existed before the date of the order granting the loan, other than the interest of the borrower, and of mortgagees of, or persons having charges on, that interest, and, where the loan is granted under section 4 with the consent of another person, the interest of that person, and of mortgagees of, or persons having charges on, that interest.

(2) When any sum due on account of any such loan, interest or costs is paid to the Collector by a surety, or an owner of property comprised in

6 Act XIX of 1883 (THE LAND IMPROVEMENT LOANS ACT). [Ss. 7 & 8

any collateral security, or is recovered under sub-section (1) by the Collector from a surety or out of any such property, the Collector shall, on the application of the surety or the owner of that property (as the case may be), recover that sum on his behalf from the borrower, or out of the land for the benefit of which the loan has been granted, in manner provided by sub-section (1).

(3) It shall be in the discretion of a Collector acting under this section to determine the order in which he will resort to the various modes of recovery permitted by it.

(Notes).

I.—“Recovery of loans.”

Revenue Recovery Act (II of 1864), S. 42, applicability of, to sales under the Land Improvement Loans Act.

(a) The provisions of S. 42 of the Madras Revenue Recovery Act do not apply to sales for recovery of loans under Act XIX of 1883; so, when the borrower's patta land is sold under the provisions of S. 7, cl. 1 (a) of the Land Improvement Loans Act (XIX of 1883), the purchaser at the sale does not take free of encumbrances as he would do under the provisions of S. 42 of Act II of 1864 in the case of a sale for arrears of land revenue. (7 M. 434, R. 25 M. 572. O

(b) In the old Abkari Act it was provided that a Collector could proceed for the recovery of abkari arrears due in like manner as for the recovery of arrears of land revenue, while in the Land Improvement Loans Act, it is laid down that arrears shall be recoverable from the borrower as if they were arrears of land revenue due by him. 25 M. 572 (575). P

(c) The District Judge was of opinion that the decision in 7 M. 434 led the Legislature to alter the form of words used in cases where it was intended that action should be taken under Act II of 1864 to recover arrears other than land revenue. This decision, however, cannot have in any way influenced the Legislature in enacting S. 7 of Act XIX of 1883, for it will be found that the Act received the assent of the Governor-General on the 11th October, 1883, while the judgment reported at 7 M. 434 was not delivered till the following March. 25 M. 572 (575). Q

8. A written order under the hand of an officer empowered to make loans under this Act granting a loan to, or with the consent of, a person mentioned therein, for the purpose of carrying out a work described therein, for the benefit of land specified therein, shall, for the purposes of this Act, be conclusive evidence—

Order granting loan conclusive on certain points.

(a) that the work described is an improvement within the meaning of this Act;

(b) that the person mentioned had at the date of the order a right to make such an improvement; and

(c) that the improvement is one benefiting the land specified.

9. When a loan is made under this Act to the members of a village-community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

Liability of joint borrowers as among themselves.

10. The Local Government, subject to the control of the Governor General in Council, may, from time to time, by notification in the local official Gazette, make rules¹ consistent with this Act to provide for the following matters, namely :—

Power to make rules.

- (a) the manner of making applications for loans ;
- (b) the officers by whom loans may be granted ;
- (c) the manner of conducting inquiries relative to applications for loans and the powers to be exercised by officers conducting those inquiries ;
- (d) the nature of the security to be taken for the due application and re-payment of the money, the rate of interest at which, and the conditions under which, loans may be granted, and the manner and time of granting loans ;
- (e) the inspection of works for which loans have been granted ;
- (f) the instalments by which, and the mode in which, loans, the interest to be charged on them and the costs incurred in the making thereof, shall be paid ;
- (g) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments made in respect of the same ; and
- (h) all other matters pertaining to the working of the Act.

(Note).

Legislative changes.

The words "*subject to the control*" were substituted for the words "*with the previous sanction*" by S. 4 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906). **R**

1.—"The Local Government.....Rules."

1.—Ajmere-Merwara.

Notification making such rules.

For—, see Ajmere Rules and Orders, Gazette of India, 1908, Pt. II, p. 531. **S**

1.—“The Local Government....rules ”—(Continued).

2.—Assam.

Notifications making such rules.

For—, see Assam list of Local Rules and Orders, Ed. 1893, pp. 194 and 199. **T**

3.—Bengal.

Notification making such rules.

For—, see Bengal List of Local Statutory Rules and Orders, Calcutta Gazette, 1908, Pt. 1, pp. 546—554. **U**

4.—Bombay.

Notifications making such rules.

For—, see Bombay List of Local Rules and Orders and Bombay Government Gazette, 1900, Pt. 1, p. 967, and *Ibid*, p. 1898. **Y**

5.—Burma.

Notifications making such rules.

For—, see Burma Gazette, 1907, Pt. 1, p. 1016. **W**

6.—Central Provinces.

Notifications making such rules.

For—, see Central Provinces Gazette, 1908, Pt. 1, p. 555. **X**

7.—Coorg.

Notification making such rules.

For—, see Coorg District Gazette, 1908, Pt. 1, p. 464. **Y**

8.—Madras.

Notifications making such rules.

For—, see Madras List of Local Rules and Orders.

For rules made by the Government of Madras, combined with rules under S. 4 of the Agriculturists' Loans Act, 1884 (XII of 1884), see Fort St. George Gazette, 1897, Pt. 1, p. 1332. **Z**

9. United Provinces and Oudh.

Notifications making such rules.

For—see United Provinces, List of Local Rules and Orders, **A-B**

10.—Punjab.

RULES UNDER THE LAND IMPROVEMENT LOANS ACT, 1883.

1. Officers who may grant loans.

Within the limits of the funds allotted to them for the purpose the following officers are empowered to grant loans :—

Assistant and Extra Assistant Commissioners.	...	up to Rs. 500
Collectors	...	up to Rs. 1,000
Commissioners	...	up to Rs. 5,000
Financial Commissioner		without limit.

Officers subordinate to the Collector will exercise these powers only when permitted to do so by the Collector.

The limits apply to the amounts which may be granted in any individual case. Commissioners may, on the recommendation of the Collector, invest selected Tahsildars with the powers of an Extra Assistant Commissioner as regards the granting of loans.

1.—"The Local Government . . . rules"—(Continued).

10.—Punjab.—(Continued).

In time of famine it may be necessary to enlarge the powers of the officers named, and this may be done by the Commissioner, subject to a report to the Financial Commissioner.

2. Interest.

(i) Interest will be charged at the rate of $6\frac{1}{2}$ per cent. per annum, unless the Local Government has, by special order, sanctioned a lower rate of interest.

(ii) Penal interest will not be charged on instalments which have been suspended by order of competent authority, but in other cases will ordinarily be charged at $6\frac{1}{2}$ per cent. per annum, simple interest, on the total of the overdue instalment, when the delay exceeds fifteen days. Compound interest will in no case be charged, and the Collector may remit or reduce the penal interest when he is satisfied that the failure is due to the inability to pay or that the levy of such interest would be productive of hardship. **C**

3. Security.

(a) When the value of the applicant's interest in the land to be improved is sufficient to cover the loan, no collateral security need be required.

(b) When a loan is made to the members of a village community who bind themselves jointly and severally as provided in S. 9 of the Act, the personal security of the applicants may be accepted. It is not necessary that all the members of the community should combine; loans may be made to any suitable group of persons who agree to be jointly and severally bound.

(c) In all cases not covered by clause (a) or clause (b) of this rule, collateral security, either real or personal, should be required, but movable property should rarely be accepted as such security. **D**

4. Security.

The borrower should be required to sign on the order of payment an agreement in a form prescribed, and should be given a copy of this agreement. **E**

5. Dates of payment of instalments.

The dates for payment of instalments should usually be the dates fixed for the payment at each harvest of the first instalment of the land revenue. **F**

6. Inspection of works.

All works for which advances are made by instalments should be inspected and reported on before each instalment subsequent to the first is paid. In the case of all such works no instalment subsequent to the first should be paid until a competent officer is satisfied that the loan is being properly applied. **G**

7. Suspension.

Instalments may be suspended by order and at the discretion of the Collector on proof of failure of crops or other exceptional calamity. The Collector should report the suspension to the Commissioner, who should satisfy himself as to the propriety of the action taken, and may, if necessary, cancel or modify the Collector's order. In all cases formal orders of suspension should be recorded. **H**

10 Act XIX of 1883 (THE LAND IMPROVEMENT LOANS ACT). [Ss. 10 to 12

1.—“The Local Government....rules ”—(Concluded).

10.—Punjab.—(Concluded.)

8. Remission.

‘ When any portion of a loan under these rules is found to be irrecoverable or when from any special cause it appears that the loan ought not to be recovered, a special report should be made to the Commissioner of the division, who has power to grant remission up to a limit of Rs. 500 in any one case. If the amount proposed for remission exceeds Rs.500, the Commissioner should forward the report to the Financial Commissioner, who has power to sanction remissions without limit.

[See Punjab Government Notification No. 284, dated 13th August, 1910.] **I**

11. When land is improved with the aid of a loan granted under this Act, the increase in value derived from the improvement shall not be taken into account in revising the assessment of land-revenue on the land :
 Exemption of improvements from assessment to land-revenue.

Provided as follows :—

- (1) where the improvement consists of the reclamation of waste-land, or irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the Local Government 1 * * * * * ;
- (2) nothing in this section shall entitle any person to call in question any assessment of land-revenue otherwise than as it might have been called in question if this Act had not been passed.

(Note).

Legislative changes.

In the first proviso to this section, the words “ with the approval of the Governor General in Council ” were omitted by S. 5 of the Land Improvement and Agriculturists’ Loans (Amendment) Act, 1906 (VIII of 1906). **J**

1.—“ RulesLocal Government.”

Rules.

For such—for—

- (1) Ajmere-Merwara, see Ajmere Rules and Orders ; **K**
- (2) Bengal (in conjunction with S. 10), see Bengal List of Local Statutory Rules and Orders. Calcutta Gazette, 1908, Pt. I, pp 546, 554 ; **L**
- (3) Burma (ditto) Burma Gazette, 1907, Pt. I, p. 1016 ; **M**
- (4) United Provinces of Agra and Oudh, United Provinces List of Local Rules and Orders. **N**

12. (Amendment of Act III of 1877)—Rep. by the Indian Registration Act, 1908 (XVI of 1908).

THE INDIAN SLAVERY ACT, 1843. . .

(ACT V OF 1843.)

(WITH THE CASE-LAW THEREON)

COMPILED AT

THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

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THE INDIAN SLAVERY ACT, 1843¹.

(ACT V OF 1843.)

[Passed on the 7th April, 1843.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1843	Slavery		Rep. in part, Act XVI of 1874.

An Act for declaring and amending the Law regarding the condition of Slavery² within the Territories of the East India Company.

(Notes).

1.—“The Indian Slavery Act, 1843.”

(1) Short title.

“The Indian Slavery Act, 1843.” See the Indian Short Titles Act, 1897 (XIV of 1897). A

(2) Places where Act has been declared to be in force.

This Act has been declared by the Laws Local Extent Act, 1874 (XVI of 1874), S. 3, to be in force in the whole of British India except as regards the Scheduled Districts.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), S. 4 (1) and Sch. I.

the Santhal Parganæ by the Santhal Parganæ Settlement Regulation (III of 1872), S. 3, as amended by Regulation III of 1899, S. 3.

in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (I of 1900).

It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely :—

Sindh	...	...	See Gazette of India,	1860, Pt. I, p. 672.
Aden	...	...		1879, Pt. I, p. 434.
West Jalpaiguri, the Western Dværs, the Western hills of Darjiling, the Darjiling Tarai and the Danson Sub-division of the Darjiling District.	...	...		1881, Pt. I, p. 74.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette 1899, Pt. I, p. 44), and Manbhum and Pargana Dhalbhum and the Kolhan in the district of Singbhum.	...	...		1881, Pt. I, p. 504

Act V of 1843 (THE INDIAN SLAVERY ACT).

1.—“The Indian Slavery Act, 1843”—(Continued).

The Porahat Estate in the District of Singhum.	See Gazette of India	1897, Pt. I, p. 1059
The Scheduled portion of the Mirzapur District. ... ..	..	1879, Pt. I, p. 383
Jaunsar Bawar. ... ..	..	1879, Pt. I, p. 382
The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan. (<i>Portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat now from the North West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and Vol. I. ibid. 1902 Pt. I. p. 575; but its application has been barred in that part of the Hazara District known as Upper Tanawal, by the Hazara (Upper Tanawal) Regulation (II of 1900 S. 3).</i>)	..	1886, Pt. I, p. 48
The District of Lahaul ... ..	..	1886, Pt. I, p. 301
The Scheduled Districts of the Central Provinces ... ..	..	1879, Pt. I, p. 771.
The District of Sylhet ... ..	..	1879, Pt. I, p. 631.
The Districts of Kamrup, Nagaon, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars) and Cachar (excluding the North Cachar Hills). ... ..	..	1878, Pt. I, p. 533
The Garo Hills, the Khasi and Jaintia Hills, the Naga Hills the North Cachar Hills in the Cachar District and the Eastern Dvars in the Goalpara District. ... ..	..	1897-Pt. I, p. 299
The Scheduled Districts in Ganjam and Vizagapatam, see Fort. St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India 1898, Pt. I, p. 870. B		

(3) Act has been extended.

It has been extended, by notification under S. 5 of the last mentioned Act, to the following Scheduled Districts namely:—

The Districts of Kumaon and Garhwal.	See Gazette of India,	1876. Pt. I, p. 606.
The Tarai of the Province of Agra. ... ..	..	1876, Pt. I, p. 505 C

1.—“The Indian Slavery Act, 1843 ”—(Concluded).

(4) Act has been applied.

It has been applied to—

British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890).

The Chin Hills as regards Hill-tribes, by the Chin Hills Regulation, 1896, (V of 1896), S. 3.

The Kachin Hill-tracts as regards Hill-tribes, by the Kachin Hill-tribes Regulation, 1895 (I of 1895), S. 3. **D**

(5) Remedial statute—Construction.

The Act being a remedial statute, must be so construed as to give to it the widest operation which its language will permit. 5 C.L.R. 11 (17 P.C.) = 3 B. 422 = 6 I.A. 137. **E**

(6) Act V of 1843—Effect.

The effect of Act V of 1843 is to prevent the enforcement of any rights which would, if that Act had not been passed, have arisen out of the status of slavery. 12 B.H.C.R. 156 (159). **F**

(7) Intention of Legislature.

It was the general intention of the Legislature, in passing Act V of 1843, as evidenced by sections 2 and 3, to relieve all persons then subject thereto from all disabilities arising out of the status of slavery. 6 C.L.R. 11 (P.C.) = 3 B. 422 = 6 I.A. 137. **G**

(8) Act held to apply, if in force at time of succession.

The Act was held to apply when it was in force at the time the succession opened although it was not when the emancipation had taken place. 5 C.L.R. 11 (P.C.) = 3 B. 422 = 6 I.A. 137. **H**

2.—“Slavery.”

(1) Slavery defined.

(a) Slavery is that civil relation in which one man has absolute power over the life, fortune, and liberty of another. It cannot subsist in the British Empire.

(b) Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent or guardian or a jailor. 3 N.W.P.H.C.R. 146. **I**

(2) *Isteela*—Mahomedan Law.

(a) *Isteela* means the entire subduement of any subject of property by force of arms. The original right of property, therefore, which one may possess over another (i.e., slavery) is to be acquired solely by *Isteela* and cannot be obtained, in the first instance, by purchase, donation or inheritance. Macnaghten's Principles and Precedents of Mahomedan Law.

(b) Mankind is originally free and is not a fit subject of slavery except in the case of *Isteela*, which obtains when a Mahomedan ruler subdues the dominion of infidels, and makes captives of its inhabitants, both male and female—(*Ibid*). **J**

(3) **Mahomedan Law—Slavery.**

According to Mahomedan Law slavery is either entire or qualified, according to circumstances. (*Ibid*). K

(4) ***Ibid.*—Entire slaves.**

There are three descriptions of entire slaves, *Mumlook*, or acquired, *Mowroos* or inherited, and *Mowkoob* or given. (*Ibid*). L

(5) ***Ibid.*—Qualified slaves.**

Qualified slaves are of three descriptions; the *Mookatib*, the *Moodubbir*, and the *Oom-i-wulud*. (*Ibid*). M

(6) ***Ibid.*—*Mookatib*.**

A *mookatib* is he between whom and his master there may have been an agreement for his ransom, on the condition of his paying a certain sum of money, either immediately, or at some future period, or by instalments. If he fulfil the condition, he will become free; otherwise he will revert to his former unqualified state of bondage. In the meantime his master parts with the possession of, but not with the property in, him. He is not however in the interval a fit subject of sale, gift, pledge or hire. (*Ibid*). N

(7) ***Ibid.*—*Moodubir***

A *Moodubir* slave is he to whom his master has promised *post obit* emancipation. Such promise, however, may be made absolutely or with limitation; in other words, the freedom of the slave may be made to depend, generally on the death of his master, whenever that event may happen; or it may be made conditionally, to depend on the occurrence of the event within a specified period. (*Ibid*). O

(8) ***Ibid.*—*Oom-i-wulud*.**

An *Oom-i-wulud* is a slave female who has borne a child or children to her master which he acknowledges as his own. She can no longer be sold. (*Ibid*). P

(9) ***Ibid.*—*Khanazad*.**

(a) Under the Mahomedan Law, if a female slave should bear offspring, by any other than her legal lord and master whether the father be a freeman or slave and whether the slave of the said master or of any other person, in any of these cases, such offspring is subject to slavery; and these are called *Khanazad*, i.e., born in the family—(*Ibid*). Q

(b) But if the children be the avowed and acknowledged offspring of the rightful owner, they are then free, and the mother of them, (being the parent of a child by her master) becomes at his decease free also. (*Ibid*). R

(c) The son of a Mahomedan by a slave girl, if acknowledged by his father, is entitled to inherit. (*Ibid*). S

1. *

*

* No public officer shall,

Prohibition of sale of persons or right to his labour on ground of slavery.

in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, sell or cause to be sold any person, or the right to the compulsory labour or services of any person, on the ground that such person is in a state of slavery.

(Note).

Legislative changes.

The words "it is hereby enacted and declared, that" at the commencement of S. 1 were repealed by the Repealing Act, 1874 (XVI of 1874). **T**

2. * * * No rights arising out of an alleged property in the person and services of another as a slave¹ shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company.

Bar to enforcement of rights arising out of alleged property in person as a slave.

(Notes).

Legislative changes.

The words "And it is hereby declared and enacted that" at the commencement of this section were repealed by the Repealing Act, 1874 (XVI of 1874). **U**

1.—"Slave."

(1) Slave.

A——is a creature without any rights or any status whatsoever, who is, or may become the property of another as a mere chattel; the owner having absolute power of disposal by sale, gift, or otherwise, even of life or death, over the slave without being responsible to any legal authority. Per Stuart, C.J. in 2 A. 723 (725). **Y**

(2) Suit barred by section—Rights derived from slave girl subsequently emancipated and married.

A suit, brought by the heir of the master of a slave-girl, emancipated by and married to such master, in his life-time, to recover, as such heir, her property in the hands of persons descended from her, is one cognizance of which is barred by this section. 12 B.H.C.R. 156. **W**

3. 1 * * * No person who may have acquired property by his own industry, or by the exercise of any art, calling or profession, or by inheritance², assignment, gift or bequest, shall be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property may have been derived was a slave³.

Bar to dispossession of property on ground of owner's slavery.

(Notes).

Legislative change

The words "And it is hereby declared and enacted that," at the commencement of this section were repealed by the Repealing Act 1874 (XVI of 1874). **X**

1.—"Section 3."

(1) Succession to emancipated slave—Mahomedan Law—Wula.

S. 3 of Act V of 1843, in effect, abrogated the *Wula* rule of the Muhammadan law, whereby the natural heirs of the emancipated slave were excluded by the heirs of the emancipator. 5 C.L.R. 11 (P.C.)=3 B. 422=6

I.A. 137.

Y

1.—“Section 3”—(Concluded).

A female slave had a child by her master, a Mahomedan, who afterwards emancipated and married her. *Held* that, under section 3 of Act V of 1843, her heirs were entitled, in preference to the heirs of her emancipator, to succeed to the share of her husband's estate, to which she had, upon his death in 1842, succeeded as his widow, the Wala rule of Mahomedan law notwithstanding. 5 C.L.R. 11 (P.C.)=3 B. 422=6 I.A. 137. Z

(2) Spiritual slavery of a pupil to his *guru*.

The agreement of a Tambiran (head of a Mutt) to become the “slave” of his *guru* could have no legal operation since 1843. 10 M. 375 (475). A

2.—“No person who....inheritance.”

“Who may have acquired property by inheritance”, meaning of the expression.

The words “who may have acquired property by inheritance”, in this section must be taken to include any person who would have acquired a title to property by right of inheritance, but for some obstacle arising out of the status of slavery. 5 C.L.R. 11 (P.C.)=3 B. 422=6 I.A. 137. B

3.—“The person....slave.”

“That the person from whom the property may have been derived was a slave,” scope of the expression.

The words in S. 3 of the Act “that the person from whom the property derived was a slave” must be taken to apply not only to a person who was a slave at the time of his or her death, but also to any person who had at any time been a slave. 5 C.L.R. 11 (P.C.)=3 B. 422=6 I.A. 137. C

4. * * * * Any act which would be a penal offence if done to a free-man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.

Penal offence
against alleged slave.

(Note).

Legislative changes.

The words “And it is hereby enacted that” at the commencement of S. 4, were repealed by the Repealing Act, 1874 (XVI of 1874). D

THE INDIAN TOLLS ACT, 1851.

(ACT VIII OF 1851.)

(WITH THE CASE-LAW THEREON)

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THE INDIAN TOLLS ACT, 1851. (ACT VIII OF 1851¹.)

[*Passed on the 4th July, 1851.*]

HISTORICAL MEMOIR.

Year.	No of Act.	Name of Act.	How affected.
1851	VIII	Tolls	Rep. in part, Act XIV of 1870. „ XII of 1876, II of 1901. Rep. in part, Amended and Sup- plemented, Act VIII of 1888. Amended (locally), Act XV of 1864. Rep. (in Bombay), Bom Act III of 1875. Supplemented, Act VIII of 1892.

An Act for enabling Government to levy Tolls on Public Roads and
Bridges.

Preamble.
follows :—

WHEREAS it is expedient to enable Government
to levy tolls upon roads and bridges ; It is enacted as

(Notes).

1.—“ Act VIII of 1851.”

(1) Short title.

“ The Indian Tolls Act, 1851.” See the Indian Short Titles Act, 1897 (XIV of 1897). A

(2) Act amended.

Act VIII of 1851 was amended by the Indian Tolls Act, 1864 (XV of 1864),
which is to be read with and taken as part of it. See S. 1 of Act XV
of 1864. B

(3) Act repealed in Bombay.

Act VIII of 1851 has been repealed in the Presidency of Bombay by the Bombay
Tolls Act, 1875 (III of 1875), S. 1. C

(4) Power to extend the territorial operation of Act VIII of 1851.

For—see Act XV of 1864, S. 3. D

(5) Act declared to be in force or extended.

Under S. 1 of the Indian Tolls Act, 1888 (VIII of 1888), Acts VIII of 1851 and
the Indian Tolls Act, 1864 (XV of 1864), are to be deemed in force
throughout the territories administered by the Lieutenant-Governor of
the Punjab on the 5th September, 1888, and from the 21st August, 1857,

Act VIII of 1851 (THE INDIAN TOLLS ACT).

1.—“Act VIII of 1851”—(Continued).

and the 24th March, 1861, respectively, to have been in force in the territories for the time being administered as part of the Punjab (which then included the Districts now forming the North-West Frontier Province).

It has been extended under S. 3 of Act XV of 1864 to Ajmer and Merwara, see Gazette of India, 1889, Pt. II, p. 562.

It has been declared in force in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (IX of 1874). S. 3, in the Central Provinces by the Central Provinces Laws Act, 1875 (XX of 1875), S. 3, as amended by the Santhal Parganas Laws and Justice Regulation, 1899 (III of 1899), S. 3 and in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette 1899, Pt. I, p. 44), and Manbhum and Pargana Dhalbhum and Kolhan in the District of Singbhum.

... See Gazette of India, 1881, Pt. I, p. 504.

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan. [(Portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and *ibid*, 1902, Pt. I, p. 575; but its application has been barred in that part of the Hazara District known as Upper Tanawal, by the Hazara (Upper Tanawal) Regulation, (II of 1900, S. 3)] Punjab and N.W. Code.

... „ 1886, Pt. I, p. 48.

The District of Lahaul.

... „ 1886 Pt. I, p. 301.

It has been extended, by notification under S. 5 of the last-mentioned Act, to the Scheduled District of Coorg. See Gazette of India, 1878, Pt. I, 45, and to the Scheduled Districts in Ganjam and Vizagapatam, see *ibid*, 1899, Pt. I, p. 720. E

(6) Rules and Orders under this Act.

For—in —

Madras, see Madras Local Rules and Orders, Vol. I, p. 10. Punjab, see Punjab List of Rules and Orders, p. 3.

Central Provinces, see Central Provinces Local Rules and Orders, p. 3. F

1. —“ Act VIII of 1851 ”—(Concluded).

(7) Right to collect tolls—Origin.

The origin of the right to collect tolls is admitted to be Act VIII of 1851 of the Acts of the Governor-General in Council. 22 W.R. 76 (77) (Cr.). **G**

(8) Jurisdiction—Tipnis Pansare right—Right to levy toll on exports from foreign territory—Immoveable property

The plaintiff had, under a grant from the Peshwas, acquired a right, known as *Tipnis Pansare* right, to levy, in the territory now owned by Punt Suchiv, a certain rate or cess on all imports into and exports from it. The cause of action admittedly arose in foreign territory; but it was contended that the suit lay in British Courts because the defendant resided in British jurisdiction:—

Held, that what the plaintiff claimed was an allowance, granted by the Peshwa in permanence; and such an allowance, whether secured on land or not, being according to Hindu law *nibandha*, was immoveable property. (6 Bom. 546, F.) 11 B L.R. 352. **H**

1. Repealed by the Repealing Act 1870 (XIV of 1870).

Repeal of Acts.

2. The Governor of the Presidency of Fort William in Bengal, the

Power to cause
levy of tolls on roads
and bridges within
certain rates¹.

Lieutenant-Governor of the North-Western Provinces of Bengal [and] the Governor of the Presidency of Fort St. George in Council **, may cause such rates of toll, not exceeding the rates mentioned in the

schedule annexed to this Act, as they respectively think fit, to be levied

and to appoint
Collectors.

upon any road or bridge which has been, or shall hereafter be made or repaired at the expense of the Government; and may place the collection of such tolls ²

under the management of such persons as may appear to them proper;

Collectors' res-
ponsibilities.

and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities ³ as would belong to them if employed

in the collection of the land-revenue.

(Notes).

(1) Legislative changes.

The word “and” was inserted between the words “the Lieutenant-Governor of the North-Western Provinces of Bengal” and the words “the Governor of the Presidency of Fort St. George in Council”, by Act VIII of 1883, S. 5.

The words “and the Governor of the Presidency of Bombay in Council” were repealed by Act VIII of 1888, S. 5. **I**

(2) Operation of Act in other parts.

The authority of the Local Government in any part of British India not specified in S. 2 to which this Act and the Indian Tolls Act, 1864 (XV of 1864) may be or have been extended, is to be the same as if it had been specified in S. 2. See the Indian Tolls Act, 1888 (VIII of 1888), S. 2 (1). **J**

1.—“Power to cause levy of tolls....certain rates.”

(1) Scope of section—Lieutenant-Governor of Bengal.

- (a) This Act, by S. 2, empowers the Governor of the Presidency of Fort William in Bengal to cause such rates of toll, not exceeding the rates mentioned in the schedule, as he thinks fit to be levied upon any road or bridge which has been, or shall thereafter be made or repaired at the expense of the Government. 22 W.R. Cr. 76 (77). **K**
- (b) It is rightly conceded that the powers contained in the Act are now vested in the Lieutenant-Governor of Bengal, who, for great many purposes, has been substituted for the Governor of Bengal. (*Ibid.*) **L**

(2) Toll to be established by distinct resolution.

The establishment of a toll must be by some distinct resolution of the Government come to for that purpose, and in some way or other notified by the Government. (*Ibid.*) **M**

2.—“Collection of such tolls.”

Grant of taluq upon which a ‘hat’ used to be held—Whether a monopoly—Calculation.

Although the Government settles a taluq, upon which a ‘hat’ has been held for many years, the Government only grants the lands included in the taluq. The fact of such settlement being arrived at by taking into calculation the profits of the ‘hat’ does not amount to any grant of tolls, for, the only reason for looking at the tolls was to ascertain the value of the lands. Such a settlement does not imply a monopoly, which will enable the holder to restrain other persons from setting up a market anywhere close by. 17 C. 458. **N**

3.—“Under the management....responsibilities.”

(1) Lessee of tolls, whether a manager.

A lessee of tolls was held not to be a person employed in the management and collection of tolls within the meaning of Act VIII of 1851. 2 B.L.R. A. Cr. 17=11 W.R. 26. **O**

Summons to a lessee of tolls—Jurisdiction—Magistrate’s powers—Warrants—Non-legal remedies.

The lessee of certain tolls to be collected at a tollgate having fallen into arrears in respect of rents payable under his lease was summoned to appear before the Magistrate to answer the charge of non-payment of rent. On his failing to appear in person, though he sent a *kyfaut* explaining the cause of non-payment, the Magistrate, issued a warrant for his arrest. Held that the non-payment of the rent was not a criminal offence, and that the Magistrate had no power under the Code of Criminal Procedure to arrest the defaulter for not appearing to the summons. Held, that, however analogous, the positions of a farmer of tolls and a farmer of a ferry may be, the law which is applicable to the latter (Regulation VI of 1819) does not extend to the former. 11 W.R. 26. **P**

3 Magistrate’s powers.

A Magistrate has no power to stipulate in a lease of tolls that rent shall be recoverable in the same way as money embezzled by native ministerial officers. 11 W.R. 26. **Q**

3.—“ Under the management....responsibilities ”—(Concluded).

(4) Contract for tolls entered into with local Fund Board—Implied breach of contract to keep road fit for traffic—Damages, measure of.

Plaintiff contracted for some tolls on a certain road under the Local Fund Board for one year. During the year, he complained to the President of the Board that the road was in such a state of disrepair as to prevent traffic and that he, in consequence, was sustaining loss, and applied for a remission. The President did not make any award in respect of this claim for compensation. Subsequently, the road, in order to enable thorough repairs to be effected was completely closed to traffic under the orders of the President and without the consent of the contractor. *Held* that this was a breach of the implied term of the contract to keep the road open to traffic, and the plaintiff was entitled to rescind the contract and claim damages from the Board. The measure of damages is the net amount, which the plaintiff would have received under the terms of the contract for the entire term, if he had been allowed to carry it out. 2 M.L.T. 194 = 17 M.L.J. 390. **R**

(5) Lease to levy tolls—Lessee, right of, to admit partners—Accounts, two sets of—False accounts kept to deceive Government.

A lessee from Government of the right to levy tolls admitted into partnership with him the plaintiff and two others. One of the conditions attached to the lease prohibited sub-letting. The plaintiff having brought a suit for his share of the profits realized in the transaction, the Judge dismissed the suit on the ground that the partnership was illegal being of opinion that sub-letting and admitting a partner were identical. *Held*, reversing the decree, that the partnership was not illegal. Where in such a partnership two sets of account were kept, one true and the other false, held that such practice, though reprehensible, was not illegal. 20 B. 668. **S**

3. In case of non-payment of any such toll on demand, the officers appointed to collect the same may seize any of the carriages or animals on which it is chargeable, or any part of their burden of sufficient value to defray the toll; and, if any toll remains undischarged for twenty-four hours, with the cost arising from such seizure, the case shall be brought before the officer appointed to superintend the collection of the said toll, who may sell the property seized for discharge of the toll, and all expenses occasioned by such non-payment, seizure and sale, and cause any balance that may remain to be returned, on demand, to the owner of the property; and the said officer, on receipt of the property, shall forthwith issue a notice that, at noon of the next day, exclusive of Sunday, or any close holiday, he will sell the property by auction:

Provided that, if, at any time before the sale has actually begun, the person whose property has been seized shall tender the amount of all the expenses incurred, and of double the toll payable by him, the said officer shall forthwith release the property seized.

Release of seized property on tender of dues.

4. No tolls shall be paid for the passage * * * * * of police-officers on duty or of any person or property in their custody, but no other exemption from payment of the tolls levied under this Act shall be allowed.

Exemptions¹
from payment of
toll.

(Notes).

Legislative Changes.

The words "of troops and military stores and equipages on their march or" were repealed by S. 8 of the Indian Tolls (Army) Act, 1901 (II of 1901).

In Upper Burma for the last sixteen words of this section, the words "or of any person or property exempted by order of the Local Government from payment of tolls" have been substituted by the Burma Laws Act, 1898 (XIII of 1898), S. 7.

1.—"Exemption."

Government Stores—Equipages.

Stores and carts belonging to the Government jails come within the words Government stores and Equipages and are free from tolls. 20 M. 16. U

(2) Military and Police officers—Agra.

For exemption of Military and Police officers in the Province of Agra, see United Provinces List of Local Rules and Orders, Vol. I, Pt. I, List 3, p. 1.

5. All police-officers shall be bound to assist the toll-collectors, when required, in the execution of this Act; and, for that purpose, shall have the same power which they have in the exercise of their common police-duties.

Assistance of col-
lectors by police-
officers.

6. Every person, other than the persons appointed to collect the tolls under this Act, who shall levy or demand any toll on any public road or bridge, or for passing through any bazaar situated thereon, and also every person who shall unlawfully and extortionately demand, or take any other or higher toll¹ than the lawful toll, or under colour of this Act seize or sell any property knowing such seizure or sale to be unlawful, or in any manner unlawfully extort money or any valuable thing from any person under colour of this Act, shall be liable on conviction before a Magistrate to imprisonment for any term not exceeding six calendar months, or to fine not exceeding two hundred rupees, any part of which fine may be awarded by the Magistrate to the person aggrieved; but this remedy shall not be deemed to bar or affect his right to have redress by suit in the Civil Court * * *

Penalty for
offences under Act.

Compensation to
person aggrieved.
Saving of his right to
sue.

(Notes).

(1) Legislative changes.

The words "of the zillah" were repealed by the Repealing Act, 1876 (XII of 1876).

(2) Summary procedure—Tolls.

A charge of an illegal demand of toll under this section ought not to be dealt with summarily under Ch. XVIII of the Code of Criminal Procedure. 22 W.R. 76 (Cr). X

(3) Illegal collection of tolls—Act VIII of 1851, Ss. 2 and 6—Public road.

A conviction for illegally collecting tolls on a public road was held to be illegal where the road was clearly not a public road within the meaning of S. 2, Act VIII of 1851. 6 W.R. Cr. 48. Y

1.—“Extortionately....higher toll.”

(1) Extortionately—Meaning.

(a) The word “extortionately” in this section is not used in the same sense as it is used in the Penal Code. 22 W.R. Cr. 76 (78). Z

(b) The meaning of the word “extortionately” in this section is an unlawful demand of toll accompanied by the sort of pressure namely, the exercise of the powers indicated in S. 3 of this Act, by seizing the complainant’s horses and carts, and detaining them until the toll was paid. (*Ibid.*) A

(c) That would not be extortion, if it was not done dishonestly, within the meaning of the Penal Code; but if the taking of the toll was unlawful, and the seizure of the carts was also unlawful, that would be an unlawful and extortionate act within the meaning of S. 6, of Act VIII of 1851 (*Ibid.*). B

(2) Notice of action—Tolls paid in excess of powers given—Suit for refund of money.

In certain suits brought against a Toll Collector for the refund of money alleged to have been exacted by him improperly as toll the defendant pleaded that no notice of suit had been given: *Held*, that such notice not having been given the suits should be dismissed. [*Waterhouse v. Keen*, 4 B and C., 200, followed]. 15 C. 259. C

7. A table of the tolls authorized to be taken at any toll-gate or station ¹ shall be put up in a conspicuous place near such gate or station legibly written or printed in English words and figures, and also in those of the vernacular language of the district, to which shall be annexed, written or printed in like manner, a statement of the penalties for refusing to pay the tolls and for taking any unlawful toll.

Exhibition of table of tolls, and statement of penalties.

(Notes).

1.—“A table of the tolls....toll-gate or station.”

Tolls to be levied at toll-bar.

(a) Under this Act, the Lieutenant Governor has no authority to direct tolls to be levied at any other place than at the toll bar. 22 W.R. Cr. 76. D

(b) Any other view of the law would be unreasonable, and would lead to the greatest confusion. (*Ibid.*) E

(c) The object of a toll-bar is to inform the public of the place at which the toll is to be demanded; and if persons can be authorised to stop a carriage at any spot in the road and demand toll there, then constant doubts and disputes would arise, and the toll-bars would become perfectly useless. (*Ibid.*) F

1.—“A table of tolls.... toll-gate or station”—(Concluded).

(d) Now this, which is a reasonable view of the matter independently of the Act is borne out by the Act itself, and also (as far as it can be seen) by the practice which has been pursued under the Act. (*Ibid*). G

(e) S. 7 of Act VII of 1851 clearly contemplates the taking of tolls at the toll-bar. (*Ibid*). H

(f) It provides that a table of the tolls authorized to be taken at any toll-gate or station shall be put up in a conspicuous place near such gate or station, and so forth. (*Ibid*). I

(g) That provision of the Act would be quite nugatory, if the tolls can be taken at any other place except the toll-gate. (*Ibid*). J

8. The tolls levied under this Act shall be deemed public revenue ;
 but the net proceeds thereof shall be applied wholly to
 the construction, repair and maintenance of roads and
 bridges within the Presidency¹ in which they are
 levied.

Application of
 proceeds of tolls.

(Notes).

1.—“Presidency.”

Presidency, scope of the expression.

The word “presidency” in S. 8 is to be deemed to mean and to have meant the territories under the administration of a Local Government. See the Indian Tolls Act, 1888 (VIII of 1888) S 2 (2). K

SCHEDULE.

On every four-wheeled carriage on springs	...	...	2 rupees.
On every two-wheeled carriage on springs (except Native hackeries)	...	...	1 rupee.
On every Native hackery on springs	...	...	2 annas.
On every four-wheeled carriage without springs	...	...	6 annas.
On every two-wheeled carriage without springs	...	...	4 annas.
On every cart and hackery not on springs, and having wheels of less diameter than three feet six inches and tyres less in breadth than three inches	...	...	8 annas.
On every cart and hackery not on springs, and not having wheels of less diameter than three feet six inches and tyres less in breadth than three inches	...	...	2 annas.
Buffaloes or bullocks, per head	...	...	6 pie.
On every elephant	...	...	1 rupee.
On every camel	...	...	4 annas.
On every horse	...	...	1 anna.
On every tattu	...	...	6 pie.
On every score of sheep or goats	...	...	2 annas.
On every herd of swine, per hundred	...	...	4 annas.
On every mule	...	...	3 pie.
On every ass	...	...	2 pie.
On every palanquin or tonjon with bearers	...	...	1 rupee.

SCHEDULE—(*Concluded*).

On every palna or small Native palanquin with bearers... 4 annas.

On every Native duli with bearers 2 annas.

On every person carrying a load for hire 2 pie.

N.B.—Animals drawing any vehicle for which toll can be demanded are not to be also charged with toll.

(Notes).

Schedule not in force in some places.

The Schedule is not in force in places to which the Indian Tolls Act, 1864 (XV of 1864), has been extended, except as to proceedings pending at the time at which that Act is extended and except as to any rate of toll levied theretofore; see S. 1.

L

THE INDIAN TOLLS ACT, 1864.

(ACT XV OF 1864¹).

(Passed on the 24th March, 1864.)

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1864	XY	Tolls	Supplemented, Act VIII of 1851.

An Act to amend Act VIII of 1851 (for enabling Government to levy *
Tolls on Public Roads and Bridges).

WHEREAS by Act VIII of 1851 (*for enabling Government to levy tolls* VIII of 1851.
on Public Roads and Bridges) authority was given for
Preamble. the levy of certain rates of toll, not exceeding the rates
mentioned in the Schedule annexed to that Act; and whereas it is expedient to make certain alterations in respect to the rates in the said Schedule mentioned; It is enacted as follows :—

(Notes).

1.—“Act XV of 1864.”

(1) Short title.

“The Indian Tolls Act, 1864.” See the Indian Short Titles Act, 1897 (XIV of 1897). **A**

(2) Statement of Objects and Reasons.

For — to the Bill which was passed into law as Act XV of 1864, see Gazette of India, 1864, p. 120. **B**

(3) Proceedings relating to the Bill.

For — see Gazette of India, 1864, Supplement, pp. 39, 67, 77, 99 and 119. **C**

(4) Act declared to be in force.

(a) This Act has been declared in force in the Santhal Parganas Settlement Regulation, 1872 (III of 1872), S. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), in the Central Provinces by the Central Provinces Laws Act 1875 (XX of 1875). See also first foot-note to S. 3, *infra*. **D**

(b) It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), but its application to hill-tribes in a hill-tract to which the Regulation applies has been barred by the Kachin Hill Tribes Regulation, 1896 (I of 1896). **E**

(c) It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely :—

The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette 1899, Pt. 1, p. 44), and Manbhum, and Pargana Dhalbhum and the Kolhan in the district of Singhbhum.

See Gazette of India, 1881, Pt. 1, p. 504.

The District of Hazara, Peshawar, Kohat, Bannu, Dera Ismail-Khan and Dera Ghazi Khan (*Portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat now form the North-West Frontier Province, see Gazette of India, 1901, Pt. 1, p. 857 and ibid, 1902, Pt. 1, p. 873*); but its application has been barred to that portion of the Hazara District known as Upper Tanawal, by the Hazara (Upper Tanawal) Regulation, 1900 (II of 1900).

„ 1886, Pt. 1, p. 48'

The District of Lahaul.

„ 1886, Pt. 1, p. 301, E-1

(d) It has been extended, by notification under S. 5 of the last mentioned Act, to the Scheduled District of Coorg. See Gazette of India, 1878, Pt. 1, p. 48. E-2

(e) The Act has been extended to Ajmer Meerwara along with Act VIII of 1851, see Gazette of India, 1889, Pt. II, p. 562; and to the Scheduled Districts in Vizagapatam and Ganjam, see Fort St. George Gazette, 1899, Pt. 1, p. 1486 and *ibid*, 1900, pt. 1, p. 1161, respectively. F

(f) The Act is to be deemed to be and to have been in force in the Punjab, from the 24th March, 1864, see the Indian Tolls Act 1888 (VIII of 1888), S. 1, and tolls levied or purporting to have been levied under the Act before the passing of Act VIII of 1888, are to be deemed to have been lawfully levied. See S. 3 (*ibid*). G

1. In any place to which this Act shall be extended by the Local Government, the Schedule to the said Act VIII of 1851 shall be of no effect except as to any proceedings pending at the time at which this Act shall be so extended, and except as to any rate of toll levied theretofore.

Schedule of Act VIII of 1851 repealed, and another Schedule substituted.

and all the provisions of the said Act applicable or referring to the rates of toll mentioned in the said Schedule shall be applicable and refer to the rates of toll mentioned in the Schedule to this Act annexed, which shall be read with and taken as part of the said Act VIII of 1851.

2. Any person entrusted with the management of the collection of tolls under Act VIII of 1851 may in his discretion compound for any period not exceeding one year with any person for a certain sum to be paid by such person for himself or for any vehicle or animal kept by him, in lieu of the rates of toll specified in the Schedule to the said Act VIII of 1851 or in the Schedule to this Act.

Collectors of tolls may compound for tolls leviable under Act VIII of 1851 or this Act.

3. The Local Government may extend ¹ this Act to any place in which the said Act VIII of 1851 is in force; and the Local Government of any place in which the said Act VIII of 1851 is not in force may extend ² the said Act VIII of 1851 and this Act to such place.

Power to extend Act.

(Notes).

1.—“The Local Government may extend.”

Bombay.

The Act now regulating tolls in the Presidency of Bombay is Bombay Act III of 1875. That Act repealed Act VIII of 1851 in the Bombay Presidency, see S. 1 and declared that Act XV of 1864 should be deemed to have been extended thereto as from the 30th July, 1864, see S. 2. H

2.—“Local Government....extend.”

Oudh, Central Provinces and Burma.

Both Acts have been extended to Oudh. See Gazette of India, 1865, Pt. 1, p. 777 and the Central Provinces (*Ibid*, Pt. 1, 1871, p. 611); and to Lower Burma, see Notification No. 66, dated the 29th February, 1892 Burma Rules Manual. I

4. For the purposes of this Act, the words “Local Government” ¹ shall denote the person authorized by law to administer executive Government in any part of the territories vested in Her Majesty by the Statute 21 & 22 Vict., cap. 106, ² entitled “an Act for the better Government of India.”

Interpretation-clause.
“Local Government.”

(Notes).

1.—“Local Government.”

Authority of Local Government.

As to the authority of the Local Government in any part of British India not specified in S. 2 of the Indian Tolls Act 1851 (VIII of 1851), to which that Act and the Indian Tolls Act, 1864 (XV of 1864), may be or have been extended, see the Indian Tolls Act, 1888 (VIII of 1888), S. 2. J

2.—“Statute 21 and 22, Vict. Cap. 106.”

N.B.—See “the Government of India Act, 1858” (21 and 22 Vict., c. 106).

SCHEDULE.

			Rs.	A.	P.
On every four-wheeled carriage	...	...	2	0	0
On every two-wheeled carriage	...	...	1	0	0
On every ekka	...	...	0	4	0
On every hackery on springs	...	...	0	2	0
On every cart and hackery not on springs drawn by 8 bullocks,					
buffaloes, horses, ponies, asses, or mules, if laden	...	...	1	8	0
Ditto.		if not laden	0	8	0
On every cart and hackery drawn by 6 bullocks, buffaloes,					
horses, ponies, asses, or mules, if laden	...	...	0	12	0
Ditto.		if not laden	0	6	0
On every cart and hackery drawn by 4 bullocks, buffaloes,					
horses, ponies, asses, or mules, if laden	...	...	0	8	0
Ditto.		if not laden	0	4	0
On every cart and hackery drawn by 2 bullocks, buffaloes,					
horses, ponies, asses, or mules, if laden	...	...	0	4	0
Ditto.		if not laden	0	2	0
Buffaloes, or bullocks, per head, if laden	...	...	0	1	0
Ditto.		if not laden	0	0	6
On every elephant	...	...	1	8	0
On every camel, if laden	...	...	0	8	0
Ditto.		if not laden	0	4	0
On every horse, if laden or ridden	...	...	0	1	6
Ditto		unladen or led	0	0	9
On every tattu or mule, if laden or ridden	...	...	0	0	9
Ditto.		unladen or led	0	0	6
On every ass, if laden or ridden	...	...	0	0	6
Ditto.		unladen or led	0	0	3
On every sheep, or goat, or pig	..	...	0	0	1
On every palankeen, duli, palna, or tonjon with 8 bearers	...	...	1	0	0
Ditto.		with 6 bearers	0	12	0
Ditto.		with 4 bearers	0	8	0
Ditto.		with 2 bearers	0	4	0
On every foot passenger	...	...	0	0	3

N.B.—Animals drawing any vehicle for which toll can be demanded are not to be also charged with toll.

THE INDIAN TOLLS ACT, 1888.

(ACT VIII OF 1888¹.)

[Passed on the 5th September, 1888.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1888	VIII	Tolls	... | Rep. in part, Act XII of 1891.

An Act to remove doubts as to the legality of the levy of certain tolls.

WHEREAS doubts have been raised as to the operation of the Acts of the Governor-General in Council, No. VIII of 1851 (*An Act for enabling Government to levy tolls on Public Roads and Bridges*) and No. XV of 1864 (*An Act to amend Act VIII of 1851*); It is hereby enacted as follows:—

(Notes).

1.—“Act VIII of 1888.”

(1) Short title.

“The Indian Tolls Act, 1888”, see the Indian Short Titles Act, 1897 (XIV of 1897). A

(2) Statement of Objects and Reasons.

For——see Gazette of India, 1888, Pt. V, p. 43. B

(3) Proceedings in Council.

For——see Gazette of India, 1888, Pt. VI, pp. 82 and 93. C

(4) Places where Act has been declared to be in force.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (KIII of 1898).

It had been previously declared in force there under S. 5 of the Scheduled Districts Act, 1874, XIV of 1874, see Burma Gazette, 1888, Pt. I, p. 497 and Gazette of India, 1888, Pt. I, p. 478. D

1. Acts VIII of 1851 and XV of 1864 shall be deemed to be

Enforcement of
Acts, VIII of 1851
and XV of 1864, in
the Punjab.

in force throughout the territories now administered by the Lieutenant-Governor of the Punjab, and from the twenty-first day of August, 1857, and the twenty-fourth day of March, 1864, respectively, to have been in force in the territories for the time being administered as part of the Punjab.

2. (1) In any part of British India beyond the limits of the territories administered by the Governor of Fort Saint George in Council, and the Lieutenant-Governors of Bengal and the North-Western Provinces, to or in which Acts VIII of 1851 and XV of 1864 may be or have been extended ¹, or may be or have been declared to be in force, under the latter of those Acts or by this Act or by or under any other enactment, the Local Government shall be deemed to have and, where the Acts have been in force before the passing of this Act, to have had the same authority as if it had been included among the Local Governments specified in section 2 of Act VIII of 1851.

(2) "Presidency," where that word occurs in section 8 of Act VIII of 1851, shall be deemed to mean, and to have meant, the territories under the administration of a Local Government.

(Notes).

1.—"Extended."

Acts VIII of 1851 and XV of 1864 extended to Lower Burma.

For notification extending the provisions of Act VIII of 1851 and of Act XV of 1864 to Lower Burma, under S. 2 of this Act, see Burma Rules Manual, Vol. I. **E**

3. All tolls levied, or purporting to have been levied, under Acts VIII of 1851 and XV of 1864, or either of those Acts, before the passing of this Act, shall be deemed to have been lawfully levied.

Validation of past
levy of tolls.

4. Nothing in the foregoing sections shall affect any proceedings commenced in any Civil Court before the first day of July, 1888.

Saving.

5. In section 2 of Act VIII of 1851 * * * * the word "and" shall be inserted between the words "the Lieutenant-Governor of the North-Western Provinces of Bengal" and the words "the Governor of the Presidency of Fort St. George in Council."

Amendment of
section 2, Act VIII
of 1851.

(Note).

Legislative changes.

The words "the words and the Governor of the Presidency of Bombay in Council are hereby repealed and" were repealed by the Repealing and Amending Act, 1891 (XII of 1891). **F**

The Local Authorities (Emergency) Loans Act.

(ACT XII OF 1897).

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

AND PUBLISHED BY

T. A. VENKASAWMY ROW

AND

T. S. KRISHNASAWMY ROW,

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THE LOCAL AUTHORITIES (EMERGENCY) LOANS ACT, 1897.

ACT XII OF 1897¹.

(26th March 1897.)

An act to enable local authorities to borrow money for temporary emergencies.

WHEREAS it is expedient to enable local authorities to borrow money for temporary emergencies ; It is hereby enacted as follows.—

(Notes).

1.—“Act XII of 1897.”

(1) Statement of Objects and Reasons.

For—see Gazette of India, 1897, Pt. V, p. 67.

A

(2) Report of the Select Committee.

For—see Gazette of India, Pt. V, p. 93.

B

(3) Proceedings in Council.

For—see Gazette of India, Pt. VI, pp. 47, 80, 112 and 198.

C

Short title, extent and commencement. 1. (1) This Act may be called the Local Authorities (Emergency) Loans Act, 1897.

(2) It extends ¹ to the whole of British India ; and

(3) It shall come into force at once.

(Note).

1.—“Extends.”

Act in force in Upper Burma.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

D

2. (1) Notwithstanding anything contained in the Local Authorities Loan Act, 1879, or any other law for the time being in force, a local authority as defined in that Act may, with the previous sanction of the *Local Government*, borrow money on the security of its funds for any of the following

Power to local authorities to borrow in cases of famine or epidemic disease.

purposes, namely :—

(a) the giving of relief and the establishment and maintenance of relief works in time of famine or scarcity ;

2 Act XII of 1897 (LOCAL AUTHORITIES (EMCY.) LOANS.) [Ss. 2 to 4

(b) the prevention of the outbreak or spread of any dangerous epidemic disease ; and

(c) any measures which may be connected with, or ancillary to, any of the purposes aforesaid.

(2) Nothing in this section shall be deemed to authorize any local authority to borrow or spend money for any purpose for which under the law for the time being in force it is not authorized to apply its funds.

(Note).

Legislative changes.

In sub-section (1), for the words "Governor-General in Council," the words "Local Government" were substituted by S. 2, Act XI of 1912. **E**

3. (1) Every loan under the last foregoing section shall be made subject to such *general or special orders as the Governor-General in Council may make in this behalf.*

Power to Governor-General in Council to impose conditions.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), *such general or special orders may prescribe :—*

(a) the terms on which the Governor-General in Council or the Local Government may lend money under this Act ;

(b) the manner of recording and enforcing the conditions on which such loans are to be made ;

(c) the inspection of any works carried out or expenditure incurred by means of such loans ;

(d) the instalments by which such loans are to be re-paid, the interest to be charged thereon and the manner and time of repaying such loans and of paying the interest thereon ; and

(e) the accounts to be kept in respect of such loans.

(Note).

Legislative changes.

In sub-section (1), for the words "terms and conditions as the Governor-General in Council may think fit to impose", the words "general or special orders as the Governor-General in Council may make in this behalf," were substituted by S. 3 (1) of Act XI of 1912.

In sub-section (2) of the same section for the words "the Governor-General in Council may by general or special order", the words "such general or special orders may" were substituted by S. 3 (2), of Act XI of 1912. **F**

Application of sections 6 and 7, Act XI, 1879.

4. The provisions of sections 6 and 7 of the Local authorities Loan Act, 1879, shall apply to the borrowing of money under this Act.

Provided that, nothing in section 7 of the Local Authorities Loan Act, 1879, shall be deemed to require the sanction of the Governor-General in Council to any loan under this Act.

(Note).

Legislative changes.

The proviso was added by S. 4, Act XI of 1912.

G

- 5.** The provisions of this Act shall apply to any loan made after the first day of January, 1897, and before the commencement of this Act by, or with the sanction of, the Governor-General in Council to any local authority for any of the purposes herein-

Application to loans
made before com-
mencement of Act.

before mentioned, and every such loan shall be deemed to have been made under this Act.

THE
Local Authorities Loan Act, 1904.
(ACT III OF 1904).

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

AND PUBLISHED BY

T. A. VENKASAWMY ROW

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THE LOCAL AUTHORITIES LOAN ACT, 1904.

ACT III OF 1904 ¹.

(20th February, 1904.)

An Act to make further provision regarding the borrowing powers of certain local authorities.

WHEREAS it is expedient to make further provision regarding the borrowing powers of certain local authorities ; It is hereby enacted as follows :—

(Notes).

I.—“ Act III of 1904.”

(1) Statement of Objects and Reasons.

For—see Gazette of India, 1903, Pt. V, p. 515.

A

(2) Report of the Select Committee.

For—see Gazette of India, 1904, Pt. V, p. 19.

B

(3) Proceedings in Council.

For—see Gazette of India, 1903, Pt. VI, p. 169, *Ibid.*, 1904, Pt. VI, pp. 9 and 20.

C

Short title and extent.

1. (1) This Act may be called the Local Authorities Loan Act, 1904.

(2) It applies only to the local authorities specified in the schedule, and any other local authority, to which the Governor-General in Council may, by notification in the Gazette of India, extend its provisions.

2. Notwithstanding anything in any other enactment for the

Issue of short-term bills.

time being in force, but subject always to the provisions of section 25 of the Indian Paper Currency Act, 1882 ¹, a local authority may, with

XX of 1982.

the previous sanction of the Governor-General in Council, borrow money by means of the issue of bills or promissory notes payable within any period, not exceeding twelve months, for any purpose for which such local authority may lawfully borrow money under any law for the time being in force :

Provided that the amount of the bills or promissory notes which may be so issued, shall not exceed, when the amount of the other moneys for the time being borrowed by such local authority is taken into account, the total amount which such local authority is empowered by law to borrow.

2 Act III of 1904 (THE LOCAL AUTHORITIES LOAN ACT). [Ss. 2 to 4]

(Notes).

Legislative changes.

The words "bills or promissory notes payable" were substituted for the words "bills repayable" and the words "or promissory notes" were inserted by S. 2 of the Local Authorities Loan (Amendment) Act, 1908 (VIII of 1908). D

1.—"Section 25 of the Indian Paper Currency Act, 1882."

N.B.—See now S. 24 of the Indian Paper Currency Act, 1905 (III of 1905).

3. Notwithstanding anything in any other enactment for the time being in force, a local authority may, with the previous sanction of the Governor-General in Council, borrow money in any manner authorized by law for the purpose of repaying money previously borrowed in accordance with law :

Power of borrowing to repay previous loan.

Provided that nothing in this section shall be deemed to empower a local authority to fix a period for the repayment of any money borrowed thereunder which, when the period fixed for the repayment of the money previously borrowed is taken into account, will exceed the maximum period fixed for the repayment of a loan by or under any enactment for the time being in force.

Regulation of conditions of borrowing and repaying money under Act.

4. The Governor-General in Council may, by general or special order, regulate the conditions on which money may be borrowed or repaid under this Act.

THE SCHEDULE.

(See section 1.)

The Corporation of Calcutta.

The Commissioners for the Port of Calcutta.

The Municipal Corporation of the City of Bombay.

The Trustees of the Port of Bombay.

The Municipal Commissioners for the City of Madras.

The Trustees of the Harbour of Madras.

The Municipal Committee of Rangoon.

The Commissioners for the Port of Rangoon.

The Municipality of Karachi.

The Trustees of the Port of Karachi.

The Trustees for the Improvement of the City of Bombay.

THE
Ancient Monuments Preservation, Act.

(ACT VII OF 1904).

(WITH THE CASE-LAW THEREON)

COMPILED AT
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T. A. VENKASAWMY ROW
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THE ANCIENT MONUMENTS PRESERVATION ACT, 1904.

ACT VII OF 1904.

CONTENTS.

SECTIONS.

1. Short title and extent.
2. Definitions.
3. Protected monuments.

Ancient Monuments.

4. Acquisition of rights in or guardianship of an ancient monument.
5. Preservation of ancient monument by agreement.
6. Owners under disability or not in possession.
7. Enforcement of agreement.
8. Purchaser at certain sales and person claiming through owner bound by instrument executed by owner.
9. Application of endowment to repair of an ancient monument.
10. Compulsory purchase of ancient monument.
11. Maintenance of certain protected monuments.
12. Voluntary contributions.
13. Protection of place of worship from misuse, pollution or desecration.
14. Relinquishment of Government rights in a monument.
15. Right of access to certain protected monuments.
16. Penalties.

Traffic in Antiquities.

17. Power to Governor-General in Council to control traffic in antiquities.

Protection of Sculptures, Carvings, Images, Bas-reliefs, Inscriptions or like objects.

18. Power to Local Government to control moving of sculptures, carvings or like objects.
19. Purchase of sculptures, carvings or like objects by the Government.

Excavations.

20. Power to Local Government to control excavation.

General.

21. Assessment of market-value or compensation.
22. Jurisdiction.
23. Power to make rules.
24. Protection to public servants acting under Act.

THE ANCIENT MONUMENTS PRESERVATION ACT, 1904. ACT VII OF 1904 ¹.

Passed by the Governor-General of India in Council.

*(Received the assent of the Governor-General on the 18th March,
1904.)*

An Act to provide for the preservation of Ancient Monuments
and objects of archæological, historical or artistic interest.

WHEREAS it is expedient to provide for the preservation of ancient monuments, for the exercise of control over traffic in antiquities and over excavation in certain places, and for the protection and acquisition in certain cases of ancient monuments and of objects of archæological, historical or artistic interest; It is hereby enacted as follows :—

(Notes).

I.—“ Act VII of 1904.”

(1) Statement of Objects and Reasons.

For ——— see Gazette of India, 1903, Pt. V, p. 513.

A

(2) Report of the Select Committee.

For ——— see Gazette of India, 1901, Pt. V, p. 57.

B

(3) Proceedings in Council.

For — — see Gazette of India, 1903, Pt. VI, pp. 166, 191; Gazette of India, 1904, Pt. VI, pp. 20 and 76.

C

(4) Object of the Act.

The object of this measure is to preserve to India its ancient monuments, to control the traffic in antiquities, and to prevent the excavation by ignorant or unauthorised persons of sites of historic interest and value. See Statement of Objects and Reasons.

D

(5) Question of antiquarian exploration attracted attention in 1898—Legislation—Necessity—Bill drafted.

- In 1898 the question of antiquarian exploration and research attracted attention, and the necessity for taking steps for the protection of monuments and relics of antiquity was impressed upon the Government of India. It was then apparent that legislation was required to enable the Government effectually to discharge their responsibilities in the matter, and a Bill was drafted on the lines of existing Acts of Parliament, modified so as to embody certain provisions which had found a place in recent legislation regarding the antiquities of Greece and

I.—“ Act VII of 1904 ”—(Continued).

Italy. This draft was circulated for the opinions of Local Governments, and the replies submitted showed that the proposals incorporated in it met with almost unanimous approval, the criticisms received being directed, for the most part against matters of detail. The draft has since been revised; the provisions of a draft Bill prepared by the Government of Bengal have been embodied, so far as they were found suitable, and the Ancient Monuments Preservation Bill (XVI of 1903) is the result. (*Ibid*). **E**

(6) Ancient monuments—Future land marks.

Ancient monuments will serve in future as landmarks of the various civilizations and Governments that existed in this country from time immemorial. See Proceedings in Council. **F**

(7) Ancient Monuments Preservation Bill, principle of.

(a) The principle of the Bill is the sound, and irrefragable, proposition that a nation is interested in its antiquities—an interest which is based on grounds alike of history, sentiment, and expediency, and that it is reasonable and proper to give statutory sanction to the maintenance of this principle by the State. See Proceedings in Council. **G**

(b) In the somewhat frigid language of the preamble, the object of the measure, more specifically stated, is ‘to provide for the preservation of ancient monuments, for the exercise of control over traffic in antiquities, and over excavation, and for the protection, and acquisition of ancient monuments and of objects of archaeological, historical, or artistic interest.’ (*Ibid*.) **H**

(c) In pursuing these ends the Government has endeavoured, as far as possible, to enlist private co-operation, to exercise the minimum of interference with the rights of property, to ensure a fair price in the event of compulsory purchase, and to pay most scrupulous deference to religious feelings or family associations. (*Ibid*). **I**

(8) *Ibid*.—To be administered with sympathy and discretion.

The Bill will require to be administered with sympathy and discretion. But it is believed that private effort will gladly combine with Government for the furtherance of objects in which both are equally concerned. (*Ibid*.) **J**

For, the individual owner is as much the trustee for his particular archaeological possession as the Government is the general trustee on behalf of the nation at large. (*Ibid*.) **K**

(9) *Ibid*.—Nature of.

“ The Bill is, however, even more than its stipulations imply. (*Ibid*). **L**

It is in reality the coping-stone of a policy in respect of archaeology and the remains of the past which the Government of India have pursued with fits and starts throughout the past half-century, but with sustained and unremitting ardour during the past few years. (*Ibid*). **M**

(10) *Ibid*.—Provisions of, protective and not penal.

The various provisions of this Bill are chiefly protective and not penal and without any unnecessary encroachment upon private or individual rights seek to preserve from ignorant, careless or wanton destruction

1.—“Act VII of 1904”—(Concluded).

ancient buildings and monuments of historic and antiquarian value which may not be known to people living in the neighbourhood or in actual possession of the same. See Proceedings in Council. **N**

1.—Labour fallen into four main categories.

- (1) Restoration or conservation with most diligent attention to the designs of their original architects.**

“Our labour may be said to have fallen into four main categories. First, there are the buildings which demanded a sustained policy of restoration or conservation, with most diligent attention to the designs of their original architects, so as to restore nothing that had not already existed, and to put up nothing absolutely new. For it is a cardinal principle that new work in restoration must be not only a re-production of old work but a part of it, only re-introduced in order to repair or to restore symmetry to the old. Of such a character has been our work at all the great centres of what is commonly known as the Hindu-Saracenic style. We have, wherever this was possible, recovered and renovated the dwellings in life and the resting-places in death of those master builders, the Mussulman Emperors and Kings.” See the Speech of Lord Curzon, in the Proceedings of the Imperial Legislature, dated 18th March, 1904. **O**

Examples.

- (i) “The Taj itself and all its surroundings are now all but free from the workman’s hands. It is no longer approached through dusty wastes and a squalid bazaar. A beautiful park takes their place; and the group of mosques and tombs, the arcaded streets and grassy Courts that precede the main building, are once more as nearly as possible what they were when completed by the masons of Shah Jehan. Every building in the garden enclosure of the Taj has been scrupulously repaired, and the discovery of the old plans has enabled us to restore the water-channels and flower-beds of the garden more exactly to their original state.” (*Ibid*). **P**

“We have done the same with the remaining buildings at Agra. The exquisite mausoleum of Itmad-ud-Dowlah, the title enamelled gem of Chini-ka-Roza, the succession of Mogul palaces in the Fort, the noble city of Akbar at Fatehpur Sikri, his noble tomb at Sikandra,—all of these have been taken in hand. Slowly they have emerged from decay and in some cases desolation, to their original perfection of form and detail. The old gardens have been restored, the old water-courses cleared out, the old balustrades renovated, the chiselled bas-reliefs repaired, and the inlaid agate, jasper and cornelian re-placed. The skilled workmen of Agra have lent themselves to the enterprise with as much zeal and taste as their fore-runners three hundred years ago. I have had there the assistance of two large-minded and cultured Lieutenant-Governors in the persons of Sir Antony MacDonnell and Sir James La Touche. Since I came to India we have spent upon repairs at Agra alone a sum of between £40,000 and £50,000. Every rupee has been an offering of reverence to the past and a gift of recovered beauty to the future; and, I do not believe that there is

I.—Labour fallen into four main categories—(Continued).

a taxpayer in this country who will grudge one anna of the outlay. It will take some three or four years more to complete the task, and then Agra will be given back to the world, a pearl of great price." *(Ibid).* **Q**

(ii) "At Delhi and Lahore we have attempted, or are attempting the same. The Emperor Jehangir no longer lies in a neglected tomb at Shahdera; his grandfather, Humayun, is once again honoured at Delhi. The Military authorities have agreed to evacuate all the principal Mogul buildings in the Delhi Fort, and the gardens and halls of the Emperors will soon re-call their former selves." *(Ibid).* **Q-1**

(iii) "I might take you down to Rajputana and show you the restored bund along the Ana Sagar Lake. There a deserted stone embankment survived, but the marble pavilions on it had tumbled down, or been converted into modern residences. Now they stand up again in their peerless simplicity, and are reflected in the waters below." *(Ibid).* **R**

(iv) "I might bring you much nearer home to Gaur and Pandua in the province of Bengal, in the restoration of which I received the enthusiastic co-operation of the late Sir John Woodburn. A hundred and twenty years ago the tombs of the Afghan Kings at Gaur were within an ace of being despoiled to provide paving stones for St. John's Church in Calcutta. Only a few years back these wonderful remains were smothered in jungle from which they literally had to be cut free. If the public were fully aware of what has been done, Malda, near to which they are situated, would be an object of constant excursion from this place." *(Ibid).* **S**

(v) "We have similarly restored the Hindu temples at Bhubaneshwar near Cuttack, and the palace and temples on the rock-fortress of Rhotasgarh." *(Ibid).* **T**

(vi) "At the other end of India I might conduct you to the stupendous ruins of the great Hindu capital of Vijayanagar one of the most astonishing monuments to perished greatness, or to Bijapur, where an equally vanished Muhammadan dynasty left memorials scarcely less enduring." *(Ibid).* **U**

(vii) "If I had more time to-day I might ask you to accept my guidance to the delicate marble traceries of the Jain temples on Mount Abu, or the more stately proportions of the mosques at Jaunpur—both of which we are saving from the neglect that was already bringing portions of them to the ground." *(Ibid).* **Y**

(viii) "Or I might take you across the Bay of Bengal to Burma, and show you King Mindon's Fort and palace at Mandalay, with their timbered halls and pavilions, which we are carefully preserving as a sample of the ceremonial and domestic architecture of the Burmese Kings." *(Ibid).* **W**

(2) Recovery of buildings from profane or sacrilegious uses—Restitution.

"A second aspect of our work has been the recovery of buildings from profane or sacrilegious uses, and their restitution either to the faith of their founders or at least to safe custody as protected monuments." *(Ibid).* **X**

I.—Labour fallen into four main categories —(Continued).

Examples.

- (i) "The exquisite little mosque of Sidi Sayid at Ahmedabad with the famous windows of pierced sandstone, which I found used as a tehsildar's cutcherry, when first I went there, is once more cleared and intact." (*Ibid*). Y
- (ii) "The Moti Musjid in the Palace at Lahore, into which I gained entrance with difficulty because the treasury was kept there in chests beneath the floor, and which was surrounded with a brick wall and iron gates, and guarded by sentries, is once more free." (*Ibid*). Z
- (iii) "The Choti Khwabghah in the Fort is no longer a church, the Dewan-i-Am is no longer a barrack, the lovely tiled Dai Anga Mosque near the Lahore Railway Station has ceased to be the Office of a Traffic Superintendent of the North-Western Railway, and has been restored to the Muhammanadan community." (*Ibid*). A
- (iv) "At Bijapur I succeeded in expelling a dak bungalow from one mosque, the relics of a British Post Office from another." (*Ibid*). B
- (v) "The mosque in the celebrated fort at Vellore in Madras is no longer tenanted by a Police Instructor. The superb *mantapam* or Hindu temple in the same fort is now scrupulously cared for. A hundred years ago the East India Company presented it to George IV, when Prince Regent, for erection in the grounds of the Pavilion at Brighton, and only failed to carry out their design, because the ship, which had been chartered for the purpose, very happily went to the bottom. Next it was used as an arsenal and finally Commissariat bullocks were tethered to its pillars." (*Ibid*). C
- (vi) "At Lucknow I recovered a mosque which had been used for years as a dispensary." (*Ibid*). D
- (vii) "At Ahmedabad I have already mentioned that the marble baradari on the bund is no longer the dining-room of the Commissioner's house." (*Ibid*).
- (viii) "At Mandalay the Church and the club are under notice of removal from the gilded throne-rooms of the Burmese Sovereigns." (*Ibid*). E

(3) Monuments in Native States—Assistance rendered if necessary.

"In this policy, which I have so far described, in relation to monuments in British territory, I have received the most cordial support from the Indian Princes in their own States. The Nizam of Hyderabad was willing to do all that I asked him—I only wish that it had been a quarter of a century earlier—for the unique caves of Ajunta and Ellora. He undertook the cataloguing and conservation of a most interesting collection of old china, copper-ware, and carpets that had been lying neglected for centuries at Aurangabad in the tomb of the wife of the Emperor Aurangzeb. The Maharana of Udaipur has willingly undertaken the restoration of the exquisite Towers of Fame and Victory on the hill fort of Chitor, one of which could hardly have survived for many more years. The Maharaja Scindia threw himself with characteristic zeal into similar works in his magnificent fortress at Gwalior. The Begum of Bhopal did all that was required at the Sanchi Tope. Finally there stands in the remote State of Dhar the

1.—Labour fallen into four main categories—(*Continued*).

huge rock-fortress of Mandu, certainly one of the most amazing natural spectacles in the world. Rising to a height of 1,500 feet above the Nerbudda plain, it carries upon its summit, which is thirty miles round, a splendid group of deserted Muhammadan fortifications, palaces, and tombs. These we are assisting the State, which is not rich enough to assume the entire responsibility itself, to place in order. They were fast perishing, victims to the ravages of the jungle and to unchallenged decay." (*Ibid*). F

(4) Starting of a number of local museums.

"There is yet another aspect of the work of conservation to which I hope that the bill that we are about to pass will lend a helping hand. This is the custody in collections or museums of rare or interesting objects that have either been torn from their surroundings or whose surroundings have disappeared." (*Ibid*). G

"Honourable Members will be familiar with the larger museums in the capital cities of India, where are collections not without value, but, as a rule, sorely mutilated, often unidentified and uncatalogued, and sometimes abominably arranged. The plain has hitherto been to snatch up any sculptured fragment, in a Province, or Presidency, and send it off to the provincial museum. This seemed to me when I looked into it, to be all wrong. Objects of archaeological interest can best be studied in relation and in close proximity to the group and style of buildings to which they belong, presuming that these are of a character and in a locality that will attract visitors. Otherwise, if transferred elsewhere, they lose focus, and are apt to become meaningless. Accordingly we have started the plan of a number of local museums, in places of the nature that I have described. I may instance Malda in Bengal, Pagan in Burma, the Taj at Agra, Bijapur in Bombay, and Peshawar, as localities where these institutions are being called into being, and I hope that in future any local fragments that may be discovered in the neighbourhood of such places, instead of being stolen, packed off, or destroyed, will find their way into these minor collections. Of course the larger provincial museums will continue to attract all classes of objections that do not easily find a local habitation." (*Ibid*). H

(5) Conclusion.

"By rendering this assistance all will join in paying the debt which each of us owes to the poets, the artists, and the creators of the past. What they originated, we can but restore; where they imagined we can but rescue from ruin. But the task though humble is worthy, and the duty though late is incumbent. A hundred and thirty years ago Samuel Johnson in England used to keep up a correspondence with Warren Hastings in Bengal, and in one of his letters the philosopher thus addressed the Governor-General—"I hope that you will examine nicely the traditions and histories of the East, that you will survey the corridors of its ancient edifices, and trace the vestiges of its ruined cities, and that on your return, we shall show the arts and opinions of a race of men from whom very little has hitherto been derived!"

I.—Labour fallen into four main categories—(Concluded).

It is in this spirit that my archaeological co-adjutors and I have worked. All know that there is beauty in India in abundance. I like to think that there is reverence also; and that amid our struggles over the present we can join hands in pious respect for the past. I like to think, too, that this spirit will survive, and that the efforts of which I have been speaking will not slacken in the hands of our successors, until India can boast that her memorials are as tenderly prized as they are precious, and as carefully guarded as they are already, and will in the future be even more, widely known.' " (*Ibid*). **I**

II.—Analysis of the Ancient Monuments Preservation Bill of 1903.

(1) First portion—Protection of ancient monuments.

(a) The first portion of the Bill deals with the protection of "ancient monuments", an expression which has been defined in section 2. See Statement of Objects and Reasons. **J**

(b) The measure will apply only to such of these as are from time to time expressly brought within its compass throughout being declared to be "protected monuments." (*Ibid*). **K**

(c) The greater number of the more famous buildings in India are already in the possession or under the control of the Government; but there are others worthy of preservation which are in the hands of private owners. Some of these have already been injured or are fast falling into decay. (*Ibid*). **L**

(d) The preservation of these is the chief object of the clauses of the Ancient Monuments Preservation Bill now referred to and the provisions of the Bill are in general accordance with the policy enunciated in S. 23 of the Religious Endowments Act, 1863 (XX of 1863), which recognizes and saves the right of the Government "to prevent injury to and preserve, buildings remarkable for their antiquity and for their historical or architectural value, or required for the convenience of the public." (*Ibid*). **M**

(e) The power to intervene is at present limited to cases to which S. 3 of Bengal Regulation XIX of 1810 or S. 3 of Madras Regulation VII of 1817 applies. (*Ibid*). **N**

(f) In framing the present Bill, the Government have aimed at enlisting the interest and good will and securing the co-operation of the owners concerned, and it is hoped that the line of action which it is proposed, to take may tend rather to the encouragement than to the suppression of private effort. (*Ibid*). **O**

(g) The Bill provides that the owner or manager of a building which merits greater care than it has been receiving, may be invited to enter into an agreement for its protection, and that, in the event of his refusing to come to terms, the Collector may proceed to acquire it compulsorily, or, if there is an endowment, move the Courts to secure its proper application. (*Ibid*). **P**

(h) It has been made clear that there is to be no resort to compulsory acquisition in the case of a monument used, in connection with religious observances, or in any other case until the owner has had

10 Act VII of 1904 (ANCIENT MONUMENTS PRESERVATION). [Ss. 1 & 2

II.—Analysis of the Ancient Monuments Preservation Bill of 1903—(*Old*).

an opportunity of entering into an agreement of the kind indicated above; and it is expressly provided that a monument maintained by the Government under the proposed Act shall not be used for any purpose inconsistent with its character or with the purposes of its foundation, and that, so far as is compatible with the object in view, the public shall have access to it free of charge. (*Ibid*). Q

(2) Second portion—Moveable objects of historical or artistic interest..

(a) The second portion of the Ancient Monuments Preservation Bill deals with moveable objects of historical or artistic interest, and these may be divided into two classes. See Statement of Objects and Reasons.

(b) The first consists of arms, enamels, silver and copper vessels, Persian and Arabic manuscripts, and curios generally. (*Ibid*). R

(c) These are for the most part portable and consequently difficult to trace; they are as a rule of artistic, rather than historic, interest; and it would be impracticable, even were it desirable, to prevent a dealer from selling, or a traveller from buying, them. (*Ibid*). S

(d) But sculptural carvings, images, bas-reliefs, inscriptions and the like form a distinct class by themselves, in that their value depends upon their local connection. Such antiquities may, as in the case of those of Swat, be found outside the confines of India, or in Native States, and these the legislature cannot reach directly; while, as regards British territory and under the existing law, it is impossible to go beyond the provisions of the Indian Treasure Trove Act, 1878 (VI of 1878). (*Ibid*). T

(3) Third portion—Excavations Rules.

The third portion of the Bill deals with excavations, and gives power to make rules to prohibit or regulate such operations. (*Ibid*). U

(4) General power to make rules—*Bona fide* Acts protected.

A general power to make rules is given by section 23, and section 24 is intended to protect acts done or in good faith intended to be done, under the Act. See Statement of Objects and Reasons. Y

Short title and extent.

1. (1) This Act may be called the Ancient Monuments Preservation Act, 1904.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Sipiti.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “ancient monument” means any structure, erection or monument, or any tumulus or place of interment or any cave, rock-sculpture, inscription, or monolith which is of historical, archaeological or artistic interest, or any remains thereof, and includes—

Sa. 2 & 3] Act VII of 1904 (ANCIENT MONUMENTS PRESERVATION). 11

- (a) the site of an ancient monument ;
- (b) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument ; and
- (c) the means of access to and convenient inspection of an ancient monument :

(2) "antiquities" include any moveable objects which the Government, by reason of their historical or archaeological associations, may think it necessary to protect against injury, removal or dispersion :

(3) "Commissioner" includes any officer authorized by the Local Government to perform the duties of a Commissioner under this Act :

(4) "maintain" and "maintenance" include the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto :

(5) "land" includes a revenue-free estate, a revenue-paying estate, and a permanent transferable tenure, whether such estate or tenure be subject to incumbrances or not : and

(6) "owner" includes a joint owner invested with powers of management on behalf of himself and other joint owners, and any manager or trustee exercising powers of management over an ancient monument, and the successor in title of any such owner and the successor in office of any such manager or trustee :

Provided that nothing in this Act shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

3. (1) The Local Government may, by notification¹ in the local official Gazette, declare an ancient monument to be a protected monument within the meaning of this Act.

Protected monuments.

(2) A copy of every notification published under sub-section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the Local Government within one month from the date when it is so fixed up will be taken into consideration.

12 Act VII of 1904 (ANCIENT MONUMENTS PRESERVATION). [Ss. 3 & 4

(3) On the expiry of the said period of one month, the Local Government, after considering the objections, if any, shall confirm or withdraw the notification.

(4) A notification published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act.

(Notes).

1.—“Notification.”

Notification by Local Governments.

- (a) For notification by the Government of Bengal, see Calcutta Gazette, 1905, Pt. I, p. 1275; Gazette of India, 1906, Pt. I, p. 74; Gazette of India, 1908, Pt. I, p. 1248.
- (b) For notification by the Government of Burma, see Burma Gazette, 1908, Pt. I, p. 571.
- (c) For notification by the Government of Central Provinces, see Central Provinces Gazette, 1905, Pt. III, p. 37; (*Ibid*), 1906, Pt. III, p. 615.
- (d) For notification by the Government of Madras, see Mad Rules and Orders, Fort St. George Gazette, 1908, Pt. I, p. 309.
- (e) For notification by the Government of Punjab, see Punjab Gazette, 1907, Pt. I, p. 841. **W**

Ancient Monuments.

Acquisition of
rights in or guar-
dianship of an
ancient monument.

4. (1) The Collector, with the sanction of the Local Government, may purchase or take a lease of any protected monument.

(2) The Collector, with the like sanction, may accept a gift or bequest of any protected monument.

(3) The owner of any protected monument may, by written instrument, constitute the Commissioner the guardian of the monument, and the Commissioner may, with the sanction of the Local Government, accept such guardianship.

(4) When the Commissioner has accepted the guardianship of a monument under sub-section (3), the owner shall, except as expressly provided in this Act, have the same estate, right, title and interest in and to the monument as if the Commissioner had not been constituted guardian thereof.

(5) When the Commissioner has accepted the guardianship of a monument under sub-section (3), the provisions of this Act relating to agreements executed under section 5 shall apply to the written instrument executed under the said sub-section.

(6) Where a protected monument is without an owner, the Commissioner may assume the guardianship of the monument.

5. (1) The Collector may, with the previous sanction of the Local Government, propose to the owner to enter into an agreement with the Secretary of State for India in Council for the preservation of any protected monument in his district.

Preservation of
ancient monument
by agreement.

(2) An agreement under this section may provide for the following matters, or for such of them as it may be found expedient to include in the agreement:—

- (a) the maintenance of the monument ;
- (b) the custody of the monument, and the duties of any person who may be employed to watch it ;
- (c) the restriction of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument ;
- (d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the Collector to inspect or maintain the monument ;
- (e) the notice to be given to the Government in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the Government to purchase such land, or any specified portion of such land, at its market-value ;
- (f) the payment of any expenses incurred by the owner or by the Government in connection with the preservation of the monument ;
- (g) the proprietary or other rights which are to vest in His Majesty in respect of the monument when any expenses are incurred by the Government in connection with the preservation of the monument ;
- (h) the appointment of an authority to decide any dispute arising out of the agreement ; and
- (i) any matter connected with the preservation of the monument which is a proper subject of agreement between the owner and the Government.

14 Act VII of 1904 (ANCIENT MONUMENTS PRESERVATION). [Sec. 5 to 7

(3) An agreement under this section may be executed by the Collector on behalf of the Secretary of State for India in Council, but shall not be so executed until it has been approved by the Local Government.

(4) The terms of an agreement under this section may be altered from time to time with the sanction of the Local Government and with the consent of the owner.

(5) With the previous sanction of the Local Government, the Collector may terminate an agreement under this section on giving six months' notice in writing to the owner.

(6) The owner may terminate an agreement under this section on giving six months' notice to the Collector.

(7) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(8) Any rights acquired by Government in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

6. (1) If the owner is unable, by reason of
Owners under disability not in possession.
infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by section 5.

(2) In the case of village property, the headman or other village-officer exercising powers of management over such property may exercise the powers conferred upon an owner by section 5.

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the persons on whose behalf he is acting to make or execute an agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

7. (1) If the Collector apprehends that the owner or occupier of a monument intends to destroy, remove, alter, deface, or imperil the monument or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 5, the Collector may make an order prohibiting any such contravention of the agreement.

Ss. 7 to 9] Act VII of 1904 (ANCIENT MONUMENTS PRESERVATION). 15

(2) If an owner or other person who is bound by an agreement for the preservation or maintenance of a monument under section 5 refuses to do any act which is in the opinion of the Collector necessary to such preservation or maintenance, or neglects to do any such act within such reasonable time as may be fixed by the Collector, the Collector may authorize any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land-revenue.

(3) A person aggrieved by an order made under this section may appeal to the Commissioner, who may cancel or modify it and whose decision shall be final.

8. Every person who purchases, at a sale for arrears of land-revenue or any other public demand, or at a sale made under the Bengal Patni Taluks Regulation, VIII of 1819, an estate or tenure in which is situated a monument in respect of which any instrument has been executed by the owner for the time being, under section 4 or section 5, and every person claiming any title to a monument from, through or under an owner who executed any such instrument, shall be bound by such instrument.

9. (1) If any owner or other person competent to enter into an agreement under section 5 for the preservation of a protected monument, refuses or fails to enter into such an agreement when proposed to him by the Collector, and if an endowment has been created for the purpose of keeping such monument in repair, or for that purpose among others, the Collector may institute a suit in the Court of the District Judge, or, if the estimated cost of repairing the monument does not exceed one thousand rupees, may make an application to the District Judge for the proper application of such endowment or part thereof.

(2) On the hearing of an application under sub-section (1), the District Judge may summon and examine the owner and any person whose evidence appears to him necessary, and may pass an order for the proper application of the endowment or of any part thereof, and any such order may be executed as if it were the decree of a Civil Court.

Compulsory purchase of ancient monument.
I of 1894.

10. (1) If the Local Government apprehends that a protected monument is in danger of being destroyed, injured, or allowed to fall into decay, the Local Government may proceed to acquire it under the provisions of the Land Acquisition Act, 1894, as if the preservation of a protected monument were a "public purpose"¹ within the meaning of that Act.

(2) The powers of compulsory purchase conferred by subsection (1) shall not be exercised in the case of—

(a) any monument which or any part of which is periodically used for religious observances ; or

(b) any monument which is the subject of a subsisting agreement executed under section 5.

(3) In any case other than the cases referred to in sub-sec. (2) the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 5 has failed, within such reasonable period as the Collector may fix in this behalf, to enter into an agreement proposed to him under the said section or has terminated or given notice of his intention to terminate such an agreement.

(Notes).

I.—"Public purpose."

(1) **Public purpose not defined—Left to discretion of Government.**

There is no definition of a "public purpose" in the Act, nor any limitation regarding what is likely to prove useful to the public. Both matters are left to the absolute discretion of the Government. See 7 C.W.N. 249=30 C. 36. X

(2) **Preservation of protected monument, to be viewed as public purpose.**

The provisions of the Land Acquisition Act apply to the preservation of a protected monument, as if it were a "public purpose" within the meaning of the Act. Act VII of 1904, Ss. 10 and 21. Y

11. (1) The Commissioner shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in section 4 or which the Government has acquired under section 10.

Maintenance of certain protected monuments.

(2) When the Commissioner has accepted the guardianship of a monument under section 4, he shall, for the purpose of maintaining such monument, have access to the monument at all reasonable times, by himself and by his agents, subordinates and workmen, for the purpose of inspecting the monument, and for the purpose of

bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof.

12. The Commissioner may receive voluntary contributions towards the cost of maintaining a protected monument and may give orders as to the management and application of any funds so received by him :

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

Protection of place of worship from misuse, pollution or desecration.

13. (1) A place of worship or shrine maintained by the Government under this Act shall not be used for any purpose inconsistent with its character.

(2) Where the Collector has, under section 4, purchased or taken a lease of any protected monument, or has accepted a gift or bequest, or the Commissioner has, under the same section, accepted the guardianship thereof, and such monument, or any part thereof, is periodically used for religious worship or observances by any community, the Collector shall make due provision for the protection of such monument, or such part thereof, from pollution or desecration---

(a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or

(b) by taking such other action as he may think necessary in this behalf.

Relinquishment of Government rights in a monument.

14. With the sanction of the Local Government, the Commissioner may---

(a) where rights have been acquired by Government in respect of any monument under this Act by virtue of any sale, lease, gift or will, relinquish the rights so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired ; or

(b) relinquish any guardianship of a monument which he has accepted, under this Act.

18 Act VII of 1904 (ANCIENT MONUMENTS PRESERVATION). [Ss. 15 to 17]

Right of access to
certain protected
monuments.

15. (1) Subject to such rules as may after previous publication be made by the Local Government, the public shall have a right of access to any monument maintained by the Government under this Act.

(2) In making any rule under sub-section (1), the Local Government may provide that a breach of it shall be punishable with fine which may extend to twenty rupees.

Penalties.

16. Any person other than the owner who destroys, removes, injures, alters, defaces or imperils a protected monument, and any owner who destroys, removes, injures, alters, defaces or imperils a monument maintained by Government under this Act or in respect of which an agreement has been executed under section 5, and any owner or occupier who contravenes an order made under section 7, sub-section (1), shall be punishable with fine which may extend to five thousand rupees, or with imprisonment which may extend to three months, or with both.

Traffic in Antiquities.

Power to Governor-General in Council to control traffic in antiquities.

17. (1) If the Governor-General in Council apprehends that antiquities are being sold or removed¹ to the detriment of India or of any neighbouring country, he may, by notification in the *Gazette of India*, prohibit or restrict the bringing or taking by sea or by land of any antiquities or class of antiquities described in the notification into or out of British India or any specified part of British India.

(2) Any person who brings or takes or attempts to bring or take any such antiquities into or out of British India or any part of British India in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to five hundred rupees.

(3) Antiquities in respect of which an offence referred to in sub-section (2) has been committed shall be liable to confiscation.

(4) An officer of customs, or an officer of Police of a grade not lower than Sub-Inspector, duly empowered by the Local Government in this behalf, may search any vessel, cart or other means of conveyance, and may open any baggage or package of goods, if he has reason to believe that goods in respect of which an offence has been committed under sub-section (2) are contained therein.

Ss. 17 & 18] Act VII of 1904 (ANCIENT MONUMENTS PRESERVATION). 19

(5) A person who complains that the power of search mentioned in sub-section (4) has been vexatiously or improperly exercised may address his complaint to the Local Government, and the Local Government shall pass such order and may award such compensation, if any, as appears to it to be just.

(Notes).

1.—“Antiquities.....removed.”

Scope of section.

(a) It is proposed by this section to take power to prevent the removal from British India of any antiquities which it may be deemed desirable to retain in the country, and at the same time to prevent importation. See Statement of Objects and Reasons. **Y-1**

(b) By thus putting a stop to traffic in such articles, it is believed that it will be possible to protect against spoliation a number of interesting places situated without and beyond British territory. (*Ibid*). **Z**

***Protection of Sculptures, Carvings, Images, Bas-reliefs,
Inscriptions or like objects.***

18. (1) If the Local Government considers that any sculptures, carvings, images, bas-reliefs, inscriptions or other like objects ought not to be moved from the place where they are without the sanction of the Government, the Local Government may, by notification² in the local official Gazette, direct that any such object or any class of such object shall not be moved unless with the written permission of the Collector.

(2) A person applying for the permission mentioned in sub-section (1) shall specify the object or objects which he proposes to move, and shall furnish, in regard to such object or objects, any information which the Collector may require.

(3) If the Collector refuses to grant such permission, the applicant may appeal to the Commissioner, whose decision shall be final.

(4) Any person who moves any object in contravention of a notification issued under sub-section(1), shall be punishable with fine which may extend to five hundred rupees.

(5) If the owner of any property proves to the satisfaction of the Local Government that he has suffered any loss or damage by reason of the inclusion of such property in a notification published under sub-section (1), the Local Government shall either—

(a) exempt such property from the said notification ;

- (b) purchase such property, if it be moveable, at its market-value ; or
- (c) pay compensation for any loss or damage sustained by the owner of such property, if it be immoveable.

(Notes).

1.—“Power....objects.”

Scope of section.

This section aims at providing for antiquities, such as sculptures and inscriptions, which belong to a particular place and ought, therefore, to be kept *in situ* or deposited in local museums. The removal of these it is proposed to enable the Local Government to prohibit by notification ; and the section also provides that, if the object is moveable, the owner may require the Government to purchase it outright, and that, if it is immoveable, the Government shall compensate the owner for any loss caused to him by the prohibition. See Statement of Objects and Reasons. **A**

2.—“Notification.”

Notification by Local Government.

For notification by the Government of—

- (1) Bengal, see Calcutta Gazette, 1908, Pt. I, p. 1248, and Gazette of India, 1909, Pt. I, p. 23.
- (2) Central Provinces, see C P. Gazette, 1906, Pt. III, p. 616. **B**

19. (1) If the Local Government apprehends that any object mentioned in a notification issued under sec. 18, sub-section (1), is in danger of being destroyed, removed, injured or allowed to fall into decay, the Local Government may pass orders for the

Purchase of sculptures, carvings or like objects by the Government.

compulsory purchase of such object at its market-value, and the Collector shall thereupon give notice to the owner of the object to be purchased.

(2) The power of compulsory purchase given by this section shall not extend to—

- (a) any image or symbol actually used for the purpose of any religious observance ; or
- (b) anything which the owner desires to retain on any reasonable ground personal to himself or to any of his ancestors or to any member of his family.

(Notes).

Scope of section.

This section deals with the compulsory purchase of such antiquities, if that is found to be necessary for their preservation and the owner is not willing, on personal or religious grounds, to part from them. See Statement of Objects and Reasons. **C**

Excavations.

20. (1) If the Local Government is of opinion that excavation within the limits of any local area ought to be restricted or regulated for the purpose of protecting or preserving any ancient monument, the Local Government may, by notification ¹ in the Local Official Gazette, make rules—

(a) fixing the boundaries of the area to which the rules are to apply; and

(b) prescribing the authority by which, and the terms on which, licenses to excavate may be granted.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) A rule made under this section may provide that any person committing a breach thereof shall be punishable with fine which may extend to two hundred rupees.

(4) If any owner or occupier of land included in a notification under sub-section (1), proves to the satisfaction of the Local Government that he has sustained any loss by reason of such land being so included, the Local Government shall pay compensation in respect of such loss.

(Notes).

1.—“ Notification. ”

Notification.

For———by the Government of—

(1) Central Provinces, *see* C.P. Gazette, 1906. Pt. III. p. 617.

(2) Madras, *see* Madras Rules and Orders.

D

General.

21. (1) The market-value of any property which Government is empowered to purchase at such value under this Act, or the amount of compensation to be paid by Government in respect of anything done under this Act, shall, where any dispute arises touching the amount of such market-value or compensation, be ascertained in the manner provided by the Land Acquisition Act, ¹ of 1894. 1894, sections 3, 8 to 34, 45 to 47, 51 and 52, so far as they can be made applicable :

Assessment
market-value
compensation¹.

of
or

Provided that when making an inquiry under the said Land Acquisition Act, 1894, the Collector shall be assisted by two assessors, one of whom shall be a competent person nominated by the Collector, and one a person nominated by the owner or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector in this behalf, by the Collector.

(Notes).

1.—“Assessment.....compensation.”

Compensation—Mode of assessment—Antiquities not proved to have any market value.

- (a) The Government of India was desirous of saving from destruction, and of preserving as public monuments, certain works in the vicinity of Madras known as the Seven Pagodas of Mahabalipuram. The works were on the open sea beach, and they were constructed out of a small extent of granite hill which lay exposed at that spot. They consisted partly of raths or monolithic temples completely and partly of figures carved upon its face. 16 M. 369 (374) (P.C.) = 20 I.A. 80. **E**
- (b) The place is very celebrated. Fergusson speaks of it as “more visited and more described than any other place in India.” One gigantic rock-carving he describes as “the most remarkable thing of its class in India.” He speaks of the raths as the oldest examples of their “class” and ascribes them to the fifth or sixth century A.D. Cole thinks they are several centuries older than that: perhaps belonging to the second century B.C. (*Ibid*). **F**
- (c) Whatever their origin, there is no doubt of their historical interest and value, or that the destruction of them would be a public misfortune. (*Ibid*). **G**
- (d) The hills supply granite of good quality, for which there is some demand in Madras, and it has been quarried for many years past. No injury to the monuments was anticipated from the original style of working, but when the zamindar of the place took to blasting the local authorities felt alarmed and advised the Government to interfere. (*Ibid*). **H**
- (e) The Government sought to acquire the said plot of land with granite quarries and also certain sculptural works of antiquity. The questions arose on appeal whether any market-value was assignable to the antiquities, and whether the assessment of the compensation had been rightly made. The antiquities were held to have no market-value, and since their acquisition would not injuriously affect the claimant, no compensation could be awarded in respect of them. (*Ibid*). **I**

2.—“Assessors.”

(1) Absence of nominated assessor—Procedure to be followed.

Where a nominated assessor absented himself on the date fixed for hearing, the course to be followed by the Judge was to give notices to the parties and to appoint some one else in his place. See 17 C. 380. **J**

(2) Persons having an interest not competent to be assessor.

The office of assessor is a quasi-judicial one, and a person is disqualified to act, as an assessor, in a matter, in which he has a direct pecuniary interest, however small, or a substantial interest likely to create a bias. See 8 B. 553. **K**

2.—“Assessors.”—(Concluded).

(3) Assessor is not competent to be a witness.

A person appointed as an assessor performs a quasi-judicial function and is, therefore, incompetent to testify as a witness in the same proceeding. See 17 B. 299. **L**

(4) Minor—Disqualified assessor—Waiver by guardian of objection.

Where the guardian of a minor had not raised any objection in the lower Court, as regards the competency of an assessor, nominated by the Collector, *held*, the minor was not estopped from objecting to the competency of the assessor in the appellate Court. See 17 B. 299. **M**

(5) Agreement of Judge and assessors as to amount of compensation—No appeal lies.

In a case where the Judge and one or both of the assessors agreed as to the amount of compensation, their decision would be final, and no appeal lay even if they differed upon minor points not falling within the scope of their jurisdiction. See 36 P.R. 1892 ; 10 C. 769. **N**

22. A Magistrate of the third class shall not have jurisdiction to try any person charged with an offence against this Act.

Jurisdiction.

23 (1) The Governor General in Council or the Local Government may make rules¹ for carrying out any of the purposes of this Act.

Power to make rules.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(Notes).

1.—“Rules.”

(1) Scope of section.

A general power to make rules is given by this section. See Statement of Objects and Reasons. **O**

(2) Madras Rules.

For rules made by the Government of Madras for the decipherment, publication and custody of Indian inscriptions on stone and copper. See Mad. Rules and Orders. **P**

24. No suit for compensation and no criminal proceeding shall lie against any public servant in respect of any act done, or in good faith intended to be done, in the exercise of any power conferred by this Act.

Protection to public servants acting under Act.

(Note).

Scope of section.

This section is intended to protect acts done or in good faith intended to be done, under this Act. See Statement of Objects and Reasons. **Q**

THE UNCLAIMED DEPOSITS ACT, 1866.

TABLE OF CASES NOTED IN THIS ACT.

Calcutta Weekly Notes.			PAGE
10 C W N 354 (359)	Apurba Krishna Roy v. Chundermoney Debi	...	2

THE UNCLAIMED DEPOSITS ACT, 1866.

INDEX.

Note :—1. The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2. S in Brevier Roman denotes the section.

A

Act XXV of 1866, Preamble, **1**.

Short title, *A*, **1**.

Proceedings in Council, *B*, **1**.

Legislative Changes, *C*, **1**.

Scope of Act—Limitation, *D, E*, **1, 2**.

C

Claim, Re-payment on subsequent establishment of, to securities, *S*, **4, 2**.

Costs, of petition under *S*. 4 of this Act, *H*, **2**.

Government, Money deposited in High Courts and unclaimed for twenty years, to be transferred to, *S*. **1, 2**.

H

High Courts, Money deposited in, and unclaimed for twenty years, to be transferred to Government, *S*. **1, 2**.

M

Money, deposited in High Courts and unclaimed for twenty years, to be transferred to Government *S*. **1, 2**.

P

Petition, Costs of, under *S*. 4 of this Act, *H*, **2**.

R

Re-payment, on subsequent establishment of claim to securities, *S*. **4, 2**.

S.

Securities, Money deposited in High Courts and unclaimed for twenty years to be transferred to Government, *S*. **1, 2**.

Transfer not made pending suits, *S*. **3, 2**.

Re-payment on subsequent establishment of claim, *S*. **4, 2**.

T

Transfer, not made pending suits, *S*. **3, 2**.

U

Unclaimed deposits, Money deposited in High Courts and unclaimed for twenty years to be transferred to Government, *S*. **1, 2**.

THE UNCLAIMED DEPOSITS ACT, 1870.

INDEX.

Note:—1. The thick figures at the end of each line refer to the page of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2. S in Brevier Roman denotes the section.

A

Act V of 1870, Preamble, 1.

Short title, *A*, 1.

Statement of Objects and Reasons, *B*, 1.

Proceedings in Council, *C*, 1.

Legislative changes, *D*, *E*, 1, 2.

Rules, *F*, 2.

C

Costs, power to direct by whom, are to be paid, S. 1, 2.

P

Petition under S. 4 (Act XXV of 1866), powers to direct by whom costs are to be paid, S. 1, 2.

Power, to direct by whom costs are to be paid, 1, 2.

THE INDIAN LAW REPORTS ACT, 1875.

TABLE OF CASES NOTED IN THIS ACT.

I. L. R. Calcutta Series.			PAGE
27 C 1 (P C)	... Moheschandra Dhal v. Satrugan Dhal	...	7
28 C 171	... Sourindra Mohun Tagore v. Siromoni Debi	...	7
28 C 289	... Mahomed Ali Hossein v. Nazar Ali	...	7
Calcutta Weekly Notes.			
4 C W N 732	... Kabul Ahmed v. Rakhal Das Hazra	...	7
5 C W N 326	... Mahomed Ali Hossein v. Mir Nazar Ali	...	7

THE INDIAN LAW REPORTS ACT, 1875.

INDEX.

Note :—1. The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures to the cases having corresponding thick letters against them in those pages.

2. S in Brevier Roman denotes the section.

A

Act II of 1875, Repealed, S. 2, 7.

Act XVIII of 1875, Preamble, 1.

Statement of Objects and Reasons, 1.

Proceedings in Council, 1.

Short title, S. 1, 6.

Local Extent, S. 1, 6.

Commencement 2, S. 1, 6.

Places where, has been declared to be in force, B, 6.

Operation of the, 6.

Allahabad Series, Publication of—Indian Law Reports, 1, 2.

Authority, given only to authorized reports, S. 3, 7.

Of judicial decision, S. 4, 7.

Authorized Reports, Authority given only to, S. 3, 7.

B

Bombay Series, Publication of—Indian Law Reports, 3.

C

Calcutta Series, Publication of—Indian Law Reports, 4.

Court, Authority given only to authorized reports, S. 3, 7.

Scope of S. 3—Monopoly of Indian Law Reports, D, E, 7.

Proper use to be made of Law Reports by Court, F, 7.

I

Indian Law Reports, Allahabad Series—Publication of, 1, 2.

Bombay Series—Publication of, 3.

Calcutta Series—Publication of, 4.

Madras Series—Publication of, 5.

Scope of S. 3—Monopoly of, D, E, 7.

J

Judicial decisions, Authority of, S. 4, 7.

L

Law Reports, Proper use to be made of, by Court, F, 7.

M

Madras Series, Publication of—Indian Law Reports, 5.

P

Publication, of Allahabad Series—Indian Law Reports, 1, 2.

Of Bombay Series—Indian Law Reports, 3.

Of Calcutta Series—Indian Law Reports, 4.

Of Madras Series—Indian Law Reports, 5.

U

Unreported case, No authority, O, 7.

1

1

THE WASTE LANDS (CLAIMS) ACT, 1863.

TABLE OF CASES NOTED IN THIS ACT.

I.L.R. Allahabad Series.			PAGE
8 A 64	... Muhammad Abid v. Muhammad Asghar	...	19
19 A 172	... Ram Saran Singh v. Birjee Singh	...	19
I.L.R. Bombay Series.			
2 B 19	... Ba'ban Mayacha v. Nagu Shrivacha	...	17
21 B 684	... Trimbak Gopal v. The Secretary of State for India		19
I.L.R. Calcutta Series.			
9 C 744	... Mahomed Ali Khan v. Khaja Abdul Gunny	...	18
12 C 279 (284), 287, 289	... Kristo Chunder Dass v. Steel		4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16
19 C 660	Rajkumar Roy v. Gobind Chunder Roy	.	18
21 C 882 (P C)	Kaiser Moideen v. Nepean	.	19
24 C 256	Mohini Mohan Roy v. Promoda Nath Roy	.	18
26 C 792	Prosunno Coomar Roy v. The Secretary of State for India in Council	...	17
I.L.R. Madras Series.			
1 M 205 (F B)	Fakir Muhammad v. Tirumla Chariar	...	18
9 M 175	The Secretary of State v. Vira Rayan	...	20
28 M 257	The Secretary of State for India v. M Krishnayya...		17
Agra High Court Reports.			
2 Agra 258	.. Rai Himmut Singh v. The Collector of Bijnour	...	8
Allahabad Weekly Notes			
17 A W N 35	.. Ram Saran Sing v. Birju Singh	...	19
Calcutta Weekly Notes.			
1 C W N 304	.. Mohini Mohan Roy v. Promoda Nath Roy	...	18
3 C W N 695	.. Prosunno Coomar Roy v. The Secretary of State for India in Council	...	17
Calcutta Law Reports.			
5 C L R 481	Ram Bandhu v. Kusu Bhattu	...	17
Sutherland's Weekly Reporter.			
8 W R 73	... Messrs. R. Watson and Co. v. The Government	...	18
5 W R Waste Lands Court Ref. 1	Taranath Dutt v. The Collector of Sylhet	...	9
7 W R 349	... Greesh Chunder Roy v. The Collector of Sylhet	...	9
7 W R 474	... Magun Pollan v. Lieutenant Colonel E Money	...	5, 14

TABLE OF CASES.

Sutherland's Weekly Reporter—(Concluded).			PAGE
8 W R 422	... Mahomed Ali v. Shurum Ali	...	17
11 W R 167, 268	... Mahomed Bassir v. Kureem Buksh	...	17
22 W R 419	... Woodwant Mahtoon v. Hunoonan l'ershad Singh	...	17
23 W R 368	... Mitterjeet Singh v. Radha Pershad Singh	...	18
Madras High Court Reports.			
1 M H C 12	... Gengu Reddi v. Asal Reddi	...	18
1 M H C R 407	... Kumaradeva Mudali v. Nallatambi Reddi	...	18
2 M H C R 1	... Venkatasami Nayakkan v. Subba Raw	...	18
4 M H C R 429	... Kullappa Naik v. Ramanuja Chariyar	...	20
7 M H C R 98	... Rajagopala Ayyangar v. Collector of Chingleput	...	18
Madras Law Journal.			
15 M L J 147	... The Secretary of State for India v. M Krishnayya		17
20 M L J 362	... Pichi Naidu v. Veeriah	...	20
Madras Law Times.			
7 M L T 380	... Pichi Naidu v. Veeriah	...	20
Madras Weekly Notes.			
M W N (1910) 75	... Pichi Naidu v. Vecriah	...	20
Indian Cases.			
5 Ind Cas 853	... Pichi Naidu v. Veeriah	...	20

THE WASTE LANDS (CLAIMS) ACT, 1863.

INDEX.

- Note—1.** The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.
- 2.** S in Brevier Roman denotes the section.

A

Act, XXIII of 1863, Preamble, **3**.

Short title, *A*, **3**.

Proceedings relating to the Bill, *B*, **3**.

Places where, has been declared to be in force, *C—E*, **3, 4**.

Construction of, *F—J*, **4, 5**.

Claims dealt with by, *K*, **5**.

Whether, applies at all to any lands except lands which are the property of Government, *L*, **5**.

Consequences of holding that provisions of, bar rights of real owner, *M*, **5**.

Act XXIII of 1863—Consequences of holding that, applies to lands sold as waste land, *N*, **5**.

Object of, *O, P*, **v**.

Waste land—Definition—Application of, *Q—S*, **5, 6**.

Special Court for trying claims under the, *S*, **7, 9**.

Construction of—Ordinary Courts considering claims to waste lands when raised by way of defence, *J—N*, **10**.

Agent, Appearance by, *S*, **10, 11**.

Appeal, No, or revision, from order under the Act, *S*, **14, 12**.

Award, under *Ss.* 19, 20, to be in full satisfaction, *S*, **21, 15**.

B

Bill, Land emerging from a—Presumption as to possession of owner, **18**.

Board, of Revenue, Report to, Claim to waste land, *S*, **5, 7—9**.

Decision of, *S*, **5, 8, 9**.

Suit to contest award by—Extension of time, *F*, **9**.

Burden of proof, Onus on purchaser to show whether lands were waste lands, *X—Z*, **14**.

Suit by Crown—Cause of action, **20**.

Cause of action, Burden of proof—Suit by Crown, **20**.

Certification, to Court, *S*, **5, 8, 9**.

Claims, dealt with by Act XXIII of 1863, *K*, **5**.

Provision for enquiry in, to land, or objections to sale of same, *S*, **1, 6**.

Procedure in cases of, or objections to waste lands, *S*, **2, 6, 7**.

to waste lands—Notification of conditions, *S*, **3, 7**.

Postponement of sale pending enquiry *re*, to waste lands, *S*, **3, 7**.

Sale to be stopped if, appear to be established but may afterwards be proceeded with, *S*, **4, 7**.

to waste land—Report to Board of Revenue, *S*, **5, 7-9**.

Claims—(Concluded).

Power to order suit to try, admitted by Collector, S. 6, 9.

Special Court for trying, under the Act, S. 7, 9.

not cognizable in other Courts, S. 8, 10.

Ordinary Courts considering, to waste lands when raised by way of defence,
J—N, 10.

Limitation as to, to land sold or dealt with—Provision for such, if preferred
within time, S. 18, 13, 14.

Purchaser of waste lands—Person having good title and being in possession—
Rights, B, C, 14.

If, established, possession not to be given but compensation, S. 19, 16.

Local Government not barred from awarding compensation for land absolutely
sold, though, be not preferred in time, S. 22, 15, 16.

Compensation for land sold subject to condition, if, proved, though not preferred
in time, S. 23, 16.

Claimant, Delivery to, of copy of order of rejection or of sale, S. 5, 7--9.

Notice to, S. 5, 8, 9.

Power to require attendance of, S. 12, 11.

Collector, Procedure in cases of claims or objections to waste lands, S. 2, 6, 7.

Postponement of sale pending enquiry *re* claims to waste lands, S. 3, 7.

Sale to be stopped if claims appear to be established, but may afterwards be pro-
ceeded with, S. 4, 7.

Delivery to claimant of copy of order of rejection or of sale, S. 5, 7.

Claim to waste land—Report to Board of Revenue, S. 5, 7, 9.

failing to give notice—Contest if necessary, D, 8.

Power to order suit to try claim admitted by, S. 6, 9.

Compensation, Limitation as to claims to land sold or dealt with, S. 18, 13, 14.

Suit for, for land wrongly sold as waste, D, E, 14.

If claim established, possession not to be given but, S. 19, 15.

Local Government not barred from awarding, for land absolutely sold, though
claim be not preferred in time, S. 22, 15, 16.

for land sold subject to condition, if claim proved, though not preferred in time,
S. 23, 16.

Contest, if necessary—Collector failing to give notice, D, 8.

Suit to, award by Board of Revenue—Extension of time, F, 9.

Court, Certification to, S. 5, 8, 9.

may proceed notwithstanding reference, but not make final order, S. 16, 12.

Crown, Suit by—Cause of action—Burden of proof, 20.

D

Damages, Limitation as to claims to land sold or dealt with, S. 18, 13, 14.

Decision, of Board of Revenue, S. 5, 8, 9.

when final, S. 5, 8, 9.

Defence, Ordinary Courts considering claims to waste lands when raised by way of,
J—N, 10.

may be heard if set up by person in possession—Sale by Government—Rights of
person in possession, O, 10.

Defendant, in suit under S. 5, S. 10, 11.

in suits under S. 6, S. 10, 11.

Appearance by pleader or by agent, S. 10, 11.

E

Easements Act (V of 1882), Ss. 60, 61—Right to use of waste land—Permissive use by tenants—Right of landlord to erect building—Works of permanent character executed by licensee, 19.

G

Government, Whether Act XXIII of 1863 applies at all to any lands except lands which are the property of, *L*, 5.

Sale by—Rights of person in possession—Defence may be heard if set up by person in possession, *O*, 10.

Presumption as to, ownership—Waste lands—South Canara, 17.

Free grazing lands set apart by, for village cattle—Disposal of part of such lands by Government—Extent of right of pasturage in Government waste lands—Relative rights of villagers and Government, how far within Civil Court's jurisdiction, 19.

Right of pasture against—Presumptive right—Waste lands, unassessed, 19.

Grant, Non-mirasi waste land—Power of Collector to make grant—Right of the former occupant, 18.

Of waste lands—Mortgage—Sale—Construction whether lands sold or mortgaged, 18.

Grazing lands, Free, set apart by Government for village cattle—Disposal of part of such lands by Government—Extent of right of pasturage in Government waste lands—Relative rights of villagers and Government, how far within Civil Court's jurisdiction, 19.

H

Hearing, Procedure before, *S*, 12, 11.

Procedure, on, *S*, 13, 12

High Court, Reference of question of law, etc., to, etc., *S*, 15, 12.

L

Law, Reference of question of, etc., to High Courts, etc., *S*, 15, 12.

Limitation, as to claims to land sold or dealt with—Provision for such claims if preferred within fine, *S*, 18, 13, 14.

Presumption—Possession of waste lands, 17.

Possession—Uncultivated land, 18.

Local Government, Power to order suit to try claim admitted by Collector, *S*, 6, 9.

not barred from awarding compensation for land absolutely sold, though claim be not preferred in time, *S*, 22, 15, 16.

Compensation for land sold subject to condition, if claim proved, though not preferred in time, *S*, 23, 16.

M

Members, Power of, *S*, 7, 9.

Mortgage, Sale—Construction whether lands sold or mortgaged—Grant of waste lands, 18.

N

Notice, Collector failing to give—Contest if necessary, *D*, 8.
to claimant, *S*, 5, 8, 9.

of Constitution of special Courts, *S*, 8, 10.

Notification, of conditions, *S*, 3, 7.

O

Ordinary Courts, considering claims to waste lands when raised by way of defence
J—*N*, 10.

Original enquiry, Exclusion of officer making, *S*, 7, 9.

P

- Plaintiff*, suit under S. 5, S. 10, 11.
 in suits under S. 6, S. 10, 11.
 Appearance by pleader or by agent, S. 10, 11.
- Pleader*, Appearance by, S. 10, 11.
- Possession*, presumption of, from evidence of title—Waste lands—Title, 17.
- Presumption*, possession, of, from evidence of title—Waste lands—Title, 17.
 Possession of waste lands—Limitation, 17.
 Waste land, 17.
 as to Government ownership—Waste lands—South Canara, 17.
 as to possession of owner—Land emerging from a Bhil, 18.
- Procedure*, in cases of claims or objections to waste lands, S. 2, 6, 7.
 Notification of conditions, S. 3, 7.
 before hearing, S. 12, 11.
 on hearing, S. 13, 12.
- Proceedings*, Regulation of, S. 11, 11.
- Purchaser*, Cannot be compelled to give patta to person claiming to be occupant before sale, A, 14.
 of waste lands—Person having good title and being in possession—Rights, B.C. 14.
 Onus on, to show whether lands were waste lands, X—Z, 14.
- Records*, Of cases where to be deposited, S. 17, 13.
- Reference*, Of question of law, etc., to High Court, etc., S. 15, 12.
 When, obligatory, S. 15, 12.
 Court may proceed notwithstanding, but not make final order, S. 16, 12.
- Regulation*, Of proceedings, S. 11, 11.
- Report*, To Board of Revenue—Claim to waste land, S. 5, 7—9.
- Revision*, No appeal or, from the order under the Act, S. 14, 12.
- Ruling power*, Waste land vested in, 17.
- Ryotwari lands*, Nature of right possessed by ryot in his lands—Right of Government to grant to other ryots lands allowed to lie waste, 18.

S

- Sale*, Postponement of, pending enquiry re claims for waste lands, S. 3, 7.
 to be stopped if claim appear to be established but may afterwards be proceeded with, S. 4, 7.
 Delivery to claimant of copy of order of rejection or of, S. 5, 7—9.
 By Government—Rights of person in possession—Defence may be heard if set up by person in possession, O, 10
 Construction whether lands sold or mortgaged—Grant of waste lands—Mortgage, 18.
- South Canara*, Presumption as to Government ownership—Waste lands, 17.
- Special Court*, Exclusion of officer making original enquiry, S. 7, 9.
 For trying claims under the Act, S. 7, 9.
 Power of members, S. 7, 9.
 Notice of constitution, of S. 8, 10.
 Where held, S. 9, 10.
- Stamp-duty*, Waste land, E, 9.
- Suit*, Institution of,—Vakalatnama, G, 9.
 Power to order, to try claim admitted by Collector, S. 6, 9.

INDEX.

Suit—(Concluded).

Plaintiff and defendant, in under S. 5, S. 10, 11.

Plaintiff and defendants in, under S. 6, S. 10, 11.

Appearance by pleader or agent, S. 10, 11.

For compensation for land wrongly sold as waste, *D, E, 14.*

By Crown—Cause of action—Burden of proof, 20.

To establish right to grant of puttah of waste lands—Preferential right of occupancy, 20.

T

Title, Possession, presumption of, from evidence of title—Waste lands, 17.

U

Uncultivated land, Limitation—Possession, 18.

V

Vakalatnama, Institution of suit, *G, 9.*

W

Waste, Allowing to lie, not abandonment, 18.

Waste land, Consequences of holding that Act XXIII of 1863 applies to lands sold as, *N, 8.*

Definition—Application of Act XXIII of 1863, *Q—S, 5, 6.*

Sale, *T, 6.*

Assessed, *U, 6.*

Unassessed, *V, 6.*

Provision for enquiry in claims to, or objections to sale of same, *S. 1, 6.*

Procedure in cases of claims or objections to, *S. 2, 6, 7.*

Postponement of sale pending enquiry *re* claims to, *S. 3, 7.*

Sale to be stopped if claim appear to be established, but may afterwards be proceeded with, *S. 4, 7.*

Delivery to claimant of copy of order of rejection or of sale, *S. 5, 7—9.*

Claim to, report to Board of Revenue, *S. 5, 7—9.*

Stamp-duty, *E, 9.*

Ordinary Courts considering claims to, when raised by way of defence, *J—N, 10.*

Limitation as to claims to, sold or dealt with, *S. 18, 13, 14.*

Purchaser cannot be compelled to give patta to person claiming to be occupant before sale, *A, 14.*

Purchaser of,—Person having good title and being in possession—Rights, *B, C, 14.*

Suit for compensation for land wrongly sold as waste, *D, E, 14.*

Onus on purchaser to show whether lands were, *X—Z, 14.*

When land sold not absolutely, or not sold, but otherwise dealt with, *S. 20, 15.*

Possession—Ownership, 17.

Presumption, 17.

South Canara—Presumption as to Government ownership, 17.

Unsettled and unoccupied, not belonging to private owner, 17.

Vested in Ruling power, 17.

Possession of,—Limitation—Presumption, 17.

Title—Possession, presumption of, from evidence of title, 17.

Grant of,—Mortgage—Sale—Construction whether lands sold or mortgaged, 18.

Patta—Rights of mirasdars, 18.

***Waste land*—(Concluded).**

Right to use of,—Permissive use by tenants—Right of landlord to erect building
—Works of permanent character executed by licensee—Easements Act (V of
1882), Ss. 60, 61, 19.

Rights of pasturage in Zemindari—Right of Zemindar to re-claim, 19.

Unassessed—Right of pasture against Government—Presumptive right, 19.

Suit to establish right to grant of puttah of, preferential right of occupancy, 20.

Witnesses, Procuring attendance of, S. 12, 11.

Words and phrases, "Other disposition," scope of the expression, *W*, 6.

Number—Gender, S. 24, 16.

THE LOCAL AUTHORITIES LOAN ACT, 1879.

INDEX.

- Note:—1.** The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.
- 2.** S in Brevier Roman denotes the section.

A

Act XXIV of 1871, Repeal of, S. 2, 2.

Act XI of 1879, Preamble, 1.

Statement of Objects and Reasons, *A*, 1.

Proceedings with regard to the Bill, *B*, 1.

Short title, Local Extent, Commencement, S. 1, 1.

Places where, has been declared to be in force, *C*, 1, 2.

Local Government may authorize parties to borrow from private persons under this, S. 7, 7—12.

Loans not to be affected except under this, S. 8, 12, 13.

Application of, to loans existing previous to the fifth of September, 1871, S. 9, 13.

Ajmere Municipal Regulations 1886 (V of 1886), S. 159—Municipal Committee, *E*, 2.

Attachment, Remedy by, if loan not repaid, S. 6, 6, 7.

Not to defeat prior charges legally made, S. 6, 7.

C

Charges, Attachment not to defeat prior, legally made, S. 6, 7.

F

Funds, Meaning of, S. 3, 2.

Loans for works may be granted on security of, S. 4, 2.

G

Governor-General in Council, Power to, to make rules, S. 5, 3.

Power to make rules in regard to loans to be taken under, S. 7, 7—12.

Grant, Rules for the, of Government loans to Local Authorities, *G*, 3—6.

L

Loans, For works may be granted on security of funds, S. 4, 2.

Rules for the grant of Government, to Local Authorities, *G*, 3—6.

Rules made under Ss. 5 and 7 for the raising of, by local authorities in the, open market, *H*, 6.

• Remedy by attachment if, not repaid, S. 6, 6, 7.

Power to make rules in regard to, to be taken under S. 7, 7—12.

Rules for raising of, by local Authorities in open market, *K*, 7—10.

Not to be affected except under this Act, S. 8, 12, 13.

Application of Act to, existing previous to the fifth of September 1871, S. 9, 13.

Local authority, Meaning of, S. 3, 2.

Definition, *E*, 2.

Rules for the grant of Government loans to, *G*, 3—6.

Local authority—(Concluded).

Rules made under Ss. 5 and 7 for the raising of loans by, in the open market, *H*, 6.

Rules for raising of loans by, in open market, *K*, 7—10.

Conditions on which, is allowed to issue sterling loans, *L*, 10.

Conditions on which local authorities are allowed to issue sterling, *L*, 10.

Loans not to be affected except under this Act, S. 8, 12, 13.

Local Government, May authorise parties to borrow from private persons under this Act, S. 7, 7—12.

M

Municipal Committee, Ajmere Municipal Regulations 1886 (V of 1886), S. 159, *E*, 2.

R

Remedy, By attachment if loan not repaid, S. 6, 6, 7.

Repeal, Of Act XXIV of 1871, S. 2, 2.

Rules, Power to Governor-General in Council to make, S. 5, 3.

For the grant of Government loans to Local Authorities, *G*, 3—6.

Made under Ss. 5 and 7 for the raising of loans by Local Authorities in the open market, *H*, 6.

Power to make, in regard to loans to be taken under, S. 7, 7—12.

For raising of loans by Local Authorities in open market, *K*, 7—10.

S

Security, Loans for works may be granted on, of funds, S. 4, 2.

Sterling loans, Conditions on which local authorities are allowed to issue, 10.

W

Words and phrases, Meaning of "Local authority," S. 3, 2.

"Funds," S. 3, 2.

THE AGRICULTURISTS' LOANS ACT, 1884.

TABLE OF CASES NOTED IN THIS ACT,

I.L.R. Allahabad Series.			PAGE
22 A 321	... Sheo Sampat Pande v. Bandhu Prasad Misr	...	5
24 A 538	... Sham Das v. Batul Bibi	...	5
26 A 540	... Babu Lal v. Ram Sahai	...	5
Allahabad Law Journal.			
1 A L J 261	... Babu Lal v. Ram Sahai	...	5
Allahabad Weekly Notes.			
20 A W N 87	... Sheo Sampat Pande v. Bandhu Prasad Misr	...	5
A W N (1904), 101...	Babu Lal v. Ram Sahai	...	5
Calcutta Weekly Notes.			
6 C W N 484 (486),	Luchmi Narain Singh v. Raghu Nandan Sahi	...	5

THE AGRICULTURISTS LOANS ACT, 1884.

INDEX.

Note :—1. The thick figures at the end of each line refer to the pages of this part and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2 S. in Briefer Roman denotes the section.

A

Act X of 1879, Repeal of, and Ss. 4 and 5 of Act XV of 1880, S. 3, 2.

Act XV of 1880, Repeal of Act X of 1879, and Ss. 4 and 5 of, S. 3, 2.

Act XII of 1884—Preamble, 1,

Short title, Commencement, S. 1, 1.

Local extent S. 2, 1, 2.

Act extended, C, 2.

Places where Act has been declared to be in force, D, 2.

G

Government, Right of,—Ex-proprietary tenants mortgaging trees to Government for takkavi advances, C, 5.

J

Joint borrowers, Liability or, as among themselves, S. 6, 6.

L

Liability, of joint borrowers as among themselves, S. 6, 6.

Loans, Power for Local Government to make rules, S. 4, 2—4.

Recovery of, under this Act, S. 5, 5.

Under the Act—Liability of joint borrowers as among themselves, S. 6, 6.

Local Government, Power for, to make rules, S. 4, 2—4.

M

Mortgage, Public Demands Recovery Act (VII of 1880, and I of 1895, B C) effect of sale under,—Priority, A, 5.

P

Priority, Mortgage—Public Demands Recovery Act, effect of sale under, A, 5,

Public Demands Recovery Act (VII of 1880 and I of 1895, B C.) Effect of sale under,

A, 5,

R

Recovery, of loans under this Act, S. 5, 5.

Scope of S. 5—Takkavi advances, X—Z, 5.

Repeal, of Act X of 1879, and Ss. 4 and 5 of Act XV of 1880, S. 3, 2.

Rules, Power for Local Government to make, S. 4, 2—4.

under this power—Ajmere-Merewara, F, 2.

Andaman and Nicobar Islands, G, 3.

Assam, H, 3.

Bengal, I, 3.

Bombay, J, 3.

Burma, K, 3.

Rules—(Concluded).

Central Provinces, *L*, 3.

Coorg, *M*, 3.

Madras, *N*, 3.

United Provinces, of Agra and Oudh, *O*, 3.

Punjab, *P*, 3, 4.

S

Sale, of house in default of payment of takkavi advance—Effect of prior incumbrance, *B*, 5.

T

Takkavi advance, Recovery—Scope of S. 5, *X—Z*, 5.

Sale of house in default of payment of,—Effect of prior incumbrance, *B*, 5.

Ex-proprietary tenants mortgaging trees to Government for,—Relinquishment of their rights to zemindar—Right of Government, *C*, 5.

THE LAND IMPROVEMENT LOANS ACT, 1883.

TABLE OF CASES NOTED IN THIS ACT.

• I L.R. Madras Series.				PAGE
7 M 434	...	Ramchandra v. Pitchaikanni	...	6
25 M 572	...	Chinnasami Mudali v. Tirumalai Pillai	...	6

THE LAND IMPROVEMENT LOANS ACT, 1883.

INDEX.

Note:—1. The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2. S in Brevier Roman denotes the section.

A

Act XXVI of 1871, Repealed, S. 2, 3.

„ *XXI of 1876*, Repealed, S. 2, 3.

„ *XIX of 1883*—Statement of Objects and Reasons, A, 1.

Report of the Select Committee, B, 1.

Proceedings in Council, C, 1.

Short title, S. 1, 1, 2.

Local extent, S. 1, 1, 2.

Commencement, S. 1, 1, 2.

Came into force, F, 2.

Extended, F-1, G, 2.

Declared to be in force, H, 2.

Purposes for which loans may be granted under this, B, 4, 3.

C

Collector, defined S. 3, 3.

Meaning, I, 3.

I

Improvement, Meaning, S. 4, 3, 4.

Loans granted under the Act—Exemption of, from assessment to land revenue, S. 11, 10.

J

Joint borrowers, Liability of, as among themselves, S. 9, 7.

L

Land revenue, Exemption of improvements from assessment to,—Loans granted under the Act, S. 11, 10.

Loans, Purposes for which, may be granted under this Act, S. 4, 3, 4.

Mode of dealing with application for, S. 5, 4.

Period for re-payment of, S. 6, 4, 5.

Recovery of, under this Act, S. 7, 5, 6.

Order granting, conclusive on certain points, S. 8, 6.

Liability of joint borrowers as among themselves, S. 9, 7.

Granted under the Act—Exemption of improvements from assessment to land revenue, S. 11, 10.

Local Government, Power to make rules, S. 10, 7—10.

N

Notification, directing the manner in which notice issued under S. 5 shall be published—Bombay, L, 4.

Making direction—Burma, M, 4.

O

Officer, empowered in Sind, *J*, 3.

P

Period, for repayment of loans, *S*. 6, 4, 5.

R

Recovery, of loans under this Act, *S*. 7, 5, 6.

Repayment, Period for, of loans, *S*. 6, 4, 5.

Repeal, Acts XXVI of 1871 and XXI of 1876,—ed, *S*. 2, 3.

Revenue Recovery Act (II 1864), *S*. 42, applicability of, to sales under the Land Improvement Loans Act, *O—Q*, 6.

Rules, Power to make, *S*. 10, 7—10.

Notification making—Ajmere-Merwara, *S*, 7.

Assam, *T*, 8.

Bengal, *U*, 8.

Bombay, *V*, 8.

Burma, *W*, 8.

Central Provinces, *X*, 8.

Coorg, *F*, 8.

Madras, *Z*, 8.

United Provinces and Oudh, *A*, 8.

Punjab, *B*, 8, 9.

K—N, 10.

S

Sales, Revenue Recovery Act (II of 1864), *S*. 42, applicability of, to sales under the Land Improvement Loans Act, *O—Q*, 6.

Sind, Officer empowered in, *J*, 3.

W

Words and phrases, Collector defined, *S*. 3, 3.

Improvement—Meaning, *S*. 4, 3, 4.

THE INDIAN SLAVERY ACT, 1843.

TABLE OF CASES NOTED IN THIS ACT.

I.L.R. Allahabad Series.			PAGE
2 A 723 (725)	... Empress of India v. Ram Kuar ..		5
I.L.R. Bombay Series.			
3 B 422	... Sayad Mir Ujmuddin Khan v. Ziaunnissa Begam ...		3, 5, 6
I.L.R. Madras Series.			
10 M 375 (475)	... Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran ...		6
North West Provinces High Court Reports.			
3 N W P H C R			
146	... The Queen v. Mirza Sikunder Bukhut ...		3
Bombay High Court Reports.			
12 B H C R 156			
(159)	... Mir Ajmuddin Khan v. Ziaunnissa ...		3, 5
Calcutta Law Reports.			
5 C L R 11 (17)			
(P C)	... Sayad Mir Ujmuddin Khan v. Ziaunnissa Begam ...		3, 5, 6
Indian Appeals.			
6 I A 137	... Sayad Mir Ujmuddin Khan v. Ziaunnissa Begam ...		3, 5, 6

THE INDIAN SLAVERY ACT, 1843.

INDEX.

Note :— 1. The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2. S in Brevier Roman denotes the Section.

A

Act V of 1843—Short title, *A*, 1.

Places where, been declared to be in force, *B*, 1, 2.

Has been extended, *C*, 2.

Has been applied, *D*, 3.

Effect, *F*, 3.

Held to apply, if in force at time of succession, *H*, 3.

C

Construction (of Statutes).

Remedial statute, *E*, 3.

Intention of Legislature, *G*, 3.

M

Mahomedan Law.

Slavery—Two kinds, *K*, 4.

Entire slaves, *I*, 4.

Qualified slaves, *M*, 4.

Mookatib, *N*, 4.

Moodubir, *O*, 4.

Oom-i-wulud, *P*, 4.

Khanzad, *Q-S*, 4.

Wula—Succession to emancipated slave, *Y*, *Z*, 5, 6.

P

Penal Offence, against alleged slave, *S* 4, 6.

Prohibition, of sale of persons or right to his labour on ground of slavery, *S*, 1, 4, 5.

S

Sale, Prohibition, of persons or right to his labour on ground of slavery, *S*, 1, 2, 3, 4, 5.

Slaves, Entire,—Mohammadan Law, *L*, 4.

Bar to enforcement of rights arising out of alleged property in person as a, *S*, 2, 5.

Defined, *Y*, 5.

Rights derived from slave girl subsequently emancipated and married, *W*, 5.

Succession to emancipated,—Mohammadan Law—Wula, *Y*, *Z*, 5, 6.

Penal offence, against alleged, *S*, 4, 6.

Slavery, defined, *I*, 3.

Isteela—Mahomedan law, *J*, 3.

Mahomedan Law—Two kinds, *K*, 4.

Mookatib, *N*, 4.

Moodubir, *O*, 4.

Oom-i-wulud, *P*, 4.

Slavery—(Concluded).

Khanazad, *Q*, *S*, 4.

Prohibition of sale of persons or right to his labour on ground of slavery, *S*. 1, 4, 5.

Bar to enforcement of rights arising out of alleged property in person as a slave,
S. 2, 5.

Bar to dispossession of property on ground of owner's, *S*. 3, 5, 6.

Spiritual, of a pupil to his guru, *A*, 6.

Succession.

Emancipated slave—Mohammadan Law—Wula, *Y*, *Z*, 5, 6.

W**Words and Phrases.**

"Who may have acquired property by inheritance," meaning of the expression,
in *S*. 3, *B*, 6.

"That the person from whom the property may have been derived was a slave,"
scope of the expression, in *S*. 3, *C*, 6.

THE INDIAN TOLLS ACT, 1851.

TABLE OF CASES NOTED IN THIS ACT.

	PAGE
6 W R Cr 48 ... Na: endronarain Singh and another ...	7
15 C 259 ... Ram Pitam Shah v. Shoobul Chunder Mullick ...	7
22 W R 76 (Cr) (78) Uttom Chunder Gangooly v. Issur Chunder Mookerjee ...	7
4 B and C 200 ... Waterhouse v. Keen ...	7

THE INDIAN TOLLS ACT, 1851.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2. S, in Brevier Roman denotes the section.

A

Act VIII of 1851, Preamble, 1.

Short title, *A*, 1.

amended, *B*, 1.

repealed in Bombay, *C*, 1.

Power to extend the territorial operation of Act VIII of 1851, *D*, 1.

declared to be in force or extended, *E*, 1, 2.

Rules and Orders under this, *F*, 2.

Operation of, in other parts, *J—L*, 3, 4.

Penalty for offences under S. 6, 6, 7.

B

Breach of contract, Implied, to keep road, fit for traffic—Damages, measure of—Contract for tolls entered into with Local Fund Board, *R*, 5.

C

Collectors, Power to cause levy of tolls on roads and bridges within certain rates and to appoint—responsibilities, S. 2, 3.

Assistance of, by police officers, S. 5, 6.

Compensation, to person aggrieved—Saving of right to sue Civil Court, S. 6, 6, 7.

Contractors, Powers for recovery of tolls, S. 3, 5.

D

Damages, Measure of—Contract for tolls entered into with Local Fund Board—Implied breach of contract to keep road fit for traffic, *R*, 5.

E

Exemptions, from payment of toll, S. 4, 6.

Tolls—Military and Police officers—*Acts*, *V*, 6.

G

Government, False accounts kept to deceive—Lease to levy tolls—Lessee, right of, to admit partners—Accounts, two sets of, S. 5.

Grant, of taluq upon which a hat used to be held—Whether a monopoly—Calculation, *N*, 4.

H

Hat, Grant of taluq upon which a, used to be held—Whether a monopoly—Calculation, *N*, 4.

J

Jurisdiction, *Tipnis Passars*, right—Right to levy toll on exports from foreign territory—Immoveable property, *H*, 3.

Summons to a lessee of tolls—Magistrate's powers—Warrants—Non-legal remedies, *P*, 4.

L

- Lease*, of tolls, Magistrate's powers, Q, 4.
 to levy tolls—Lessee, right of, to admit partners—Accounts, two sets of—False accounts kept to deceive Government, S, 5.
- Lessee*, of tolls whether a manager, O, 4.
 Summons to a, of tolls—Jurisdiction—Magistrate's powers—Warrants—Non-legal remedies, P, 4.
 Right of, to admit partners—Accounts, two sets of—False accounts kept to deceive Government—Lease to levy tolls, S, 5.

M

- Magistrate*, Magistrate's powers—Warrants—Non-legal remedies—Summons to a lessee of tolls—Jurisdiction, P, 4.
 Magistrate's powers, Q, 4.

O

- Offences*, Penalty for, under Act, S. 6, 6, 7.

P

- Partners*, Lessee, right of, to admit—Accounts, two sets of—False accounts kept to deceive Government—Lease to levy tolls, S, 5.
- Penalties*, Exhibition of table of tolls and statement of, S. 7, 7, 8.
- Penalty*, for offences under Act, S. 6, 6.
- Police officers*, Assistance of Collectors by, S. 5, 6.
- Presidency*, scope of the expression, K, 8.
- Procedure*, Summary—Tolls, X, 7.

R

- Release*, of seized property on tender of dues, S. 3, 5.
- Repeal*, of Acts, S. 1, 3.
- Rules*, and orders under this Act, F, 2.

S

- Suit*, for refund of money—Notice of action—Tolls paid in excess of powers given, C, 7.
- Summons*, to a lessee of tolls—Jurisdiction—Magistrate's powers—Warrants—Non-legal remedies, P, 4.

T

- Tipnis Pansare* right—Jurisdiction—Right to levy toll on exports from foreign territory—Immoveable property, H, 3.
- Tolls*, Right to collect—Origin, G, 3.
 Right to levy, on exports from foreign territory—Immoveable property—Jurisdiction—Tipnis Pansare, right, H, 3.
 Power to cause levy of, on roads and bridges within certain rates and to appoint Collectors—Collectors' responsibilities, S. 2, 3—5.
 to be established by distinct resolution, M, 4.
 Lessee of, whether a manager, O, 4.
 Summons to a lessee of—Jurisdiction—Magistrate's powers—Warrants—Non-legal remedies, P, 4.
 Lease of—Magistrate's powers, Q, 4.
 Contract for, entered into with Local Fund Board—Implied breach of contract to keep road fit for traffic—Damages, measure of, R, 8.
 Lease to levy—Lessee, right of, to admit partners—Accounts two sets of—False accounts kept to deceive Government, S, 5.
 Contractors' powers for recovery, S. 8, 8.

Tolls—(Concluded).

Release of seized property on tender of dues, S. 3, 3.

Exemptions from payment of, S. 4, 6.

Government stores—Equipages, U, 6.

Summary procedure, X, 7.

Illegal collection of—Public road, Y, 7.

paid in excess of powers given—Suit for refund of money—Notice of action, C, 7.

Exhibition of table of, and statement of penalties, S. 7, 7, 8.

to be levied at toll-bar, *X—J*, 7, 8.

Application of proceeds of, S. 8, 8, 9.

Schedule, 8, 9.

Schedule not in force in some places, L, 9.

W

Words and phrases, Extortionately—Meaning, Z—B, 7.

Presidency, scope of the expression, K, 8.

THE INDIAN TOLLS ACT, 1864.

INDEX.

Note. 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2. S in Brevier Roman denotes the section.

A

Act XV of 1864—Short title, *A*, 11.

Statement of Objects and Reasons, *B*, 11.

Proceedings relating to the Bill, *C*, 11.

Declared to be in force, *D*, 11.

Power to extend, *S. 3*, 13.

C

Collectors, of tolls may compound for tolls leviable under Act VIII of 1851 or this Act, *S. 2*, 13.

L

Local Government, Authority of, *J*, 13.

S

Schedule, of Act VIII of 1851 repealed, and another, substituted, *S. 1*, 12.

T

Tolls, *Collectors* of, may compound for, leviable under Act VII of 1851 or this Act, *S. 2*, 13.

Rates, See SCHEDULE, 14.

W

Words and phrases, Meaning of—*Local Government*, *S. 4*, 13, 14.

THE INDIAN TOLLS ACT, 1888.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceeding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2. S in Brevier Roman denotes the section.

Act VIII of 1888, Short title, *A*, **15**.

Statement of Objects and Reasons, *B*, **15**.

Proceedings in Council, *C*, **15**.

Places where, has been declared to be in force, *D*, **15**.

• Operation of the, in the Punjab and certain other parts of British India, *S. 2*, **16**.

Saving, *S. 4*, **16**.

Amendment, of *S. 2*, Act VIII of 1851, *S. 5*, **16**.

British India, Operation of the Act in certain other parts of *S. 2*, **16**.

Lower Burma, Acts VIII of 1851 and XV of 1864 extended to, *E*, **16**.

Punjab, Enforcement of Acts, VIII of 1851 and XV of 1864, in the, *S. 1*, **15**.

Operation of the Act in the, *S. 2*, **16**.

. T

Tolls, Validation of past levy of tolls, *S. 3*, **16**.

THE LOCAL AUTHORITIES (EMERGENCY) LOANS ACT, 1897.

INDEX.

Note. 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refers to the cases having corresponding thick letters against them in those pages.

2. S., in Brevier Roman denotes the section.

Act XI of 1879, Ss. 6, 7, application of, S. 4, 2, 3.

Act XII of 1897, Statement of Objects and Reasons, *A*, 1.

Report of the Select Committee, *B*, 1.

Proceedings in Council, *C*, 1.

Short title, extent and commencement, S. 1, 1.

In force in Upper Burma, *D*, 1.

Application to loans made before commencement of, S. 5, 3.

E

Epidemic disease, Power to local authorities to borrow in cases of, S. 2, 1.

Famine, power to local authorities to borrow in cases of, S. 2, 1.

Governor-General in Council, power to, to impose conditions, S. 3, 2.

Loan, power to local authorities to borrow in cases of famine or epidemic disease, S. 2, 1.

under S. 2—Power to Governor-General in Council to impose conditions, S. 3, 2.

under this Act—Application of Ss. 6 and 7, Act XI of 1879, S. 4, 2, 3.

Applications to, made before commencement of this Act, S. 5, 3.

Local authorities, power to, borrow in cases of famine or epidemic disease, S. 2, 1.

THE LOCAL AUTHORITIES' LOAN ACT, 1904.

INDEX.

Note. 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2. S. in Brevier Roman denotes the section.

A

Act III of 1904, Statement of Objects and Reasons, **A**, 1.

Report of the Select Committee, *B*, 1.

Proceedings in Council, *C*, 1.

Short title and extent, **S. 1**, 1.

Regulation of conditions of borrowing and repaying money under, **S. 4**, 2.

G

Governor-General-in-Council, Issue of short-term bills with the previous sanction of, **S. 2**, 1.

Power of borrowing to repay previous loan with previous sanction of, **S. 3**, 2.

Regulation of conditions of borrowing and repaying money under the Act, **S. 4**, 2.

L

Loan, Power of borrowing to repay previous, with previous sanction of Governor-General in Council, **S. 3**, 2.

Local Authority, Issue of short term bills with the previous sanction of Governor-General, **S. 2**, 1.

Power of borrowing to repay previous loan with previous sanction of Governor-General in Council, **S. 3**, 2.

R

Regulation, of conditions of borrowing and repaying money under Act, **S. 4**, 2.

S

Short terms bills, Issue of, with the previous sanction of Governor-General, **S. 2**, 1.

THE ANCIENT MONUMENTS PRESERVATION ACT, 1904.

TABLE OF CASES NOTED IN THIS ACT.

	I.L.R. Bombay Series.	PAGE.
8 B 553	... Kashinath Khasgivala v. The Collector of Poona.	22
17 B 299	... Swami Rao v. The Collector of Dharwar ...	23
	I.L.R. Calcutta Series.	
10 C 769	... Secretary of State for India in Council v. Shan Bahadoor ...	23
17 C 380	... Kamini Dasi, <i>In the matter of the petition of.</i> v. Secretary of State for India in Council ...	22
30 C 86	... Ezra v. The Secretary of State ...	16
	I.L.R. Madras Series.	
16 M 369 (374) (P C)	The Secretary of State for India in Council v. Shunmugaraya Mudaliar ...	22
	Calcutta Weekly Notes.	
7 C W N 249	... J. E. D. Ezra v. The Secretary of State for India in Council ...	16
	Punjab Records.	
36 P R 1892	... Imam Bakhsh v. The Collector of Muzaffargarh ...	23
	Indian Appeals.	
20 I A 80	... Secretary of State for India in Council v. Shunmugaraya Mudaliar ...	22

THE ANCIENT MONUMENTS PRESERVATION ACT, 1904.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S, in Brevier Roman denotes the section.

A

Act VII of 1904, Statement of Objects and Reasons, *A*, 3.

Report of the Select Committee, *B*, 3.

Proceedings in Council, *C*, 3.

Object of, *D*, 3.

Question of antiquarian exploration attracted attention in 1898—Legislation—Necessity—Bill drafted, *E*, 3, 4.

Short title and extent, S. 1, 10.

Offence under the, —Jurisdiction, S. 22, 23.

Agreement, Preservation of ancient monument by, S. 5, 13, 14.

Enforcement of, S. 7, 14, 15.

Ancient monuments, Future land marks, *F*, 4.

Restoration or conservation with most diligent attention to the designs of their original architects, *O*—*H*, 5, 6.

Recovery of buildings from profane or sacrilegious uses—Restitution, *X*—*F*, 6, 7.

in Native States—Assistance rendered if necessary, *F*, 7, 8.

Starting of a number of local museums, *G*, *H*, 8.

Moveable objects of historical or artistic interest, *R*—*T*, 10.

declared protected monuments, S. 3, 11, 12.

Notification by Local Governments, *W*, 12.

Acquisition of rights in or guardianship of an, S. 4, 12, 13.

Preservation of, by agreement, S. 5, 13, 14.

Owners under disability not in possession, S. 6, 14.

Enforcement of agreement, S. 7, 14, 15.

Purchasers at certain sales and persons claiming through owner bound by instrument executed by owner, S. 8, 15.

Application of endowment to repair of an, S. 9, 15.

Compulsory purchase of, S. 10, 16.

Power to Local Government to control excavation, S. 20, 21.

Assessment of market value or compensation, S. 21, 21—23.

Preservation Bill, Principle of, *G*—*I*, 4.

to be administered with sympathy and discretion, *J*, *K*, 4.

Nature of, *L*, *M*, 4.

Provisions of, protective and not penal, *N*, 4, 5.

Antiquities, Power to Governor General in Council to control traffic in, S. 17, 18, 19.

not proved to have any market value—Compensation—Mode of assessment, 22.

Appeal, No, lies—Agreement of Judge and assessors as to the amount of compensation, *N*, 23.

Assessment, Mode of—Antiquities not proved to have any market value—Compensation, *E*—*I*, 22.

Assessor, Absence of nominated—Procedure to be followed, *J*, 22.

Persons having an interest not competent to be, *K*, 22.

is not competent to be a witness, *L*, 23.

Disqualified—Waiver by guardian of objection—Minor, *M*, 23

Agreement of Judge and, as to amount of compensation—No appeal lies, *N*, 23.

B

Bengal Patni Taluqs Regulation, 1819, Purchasers at certain sales and persons claiming through owner bound by instrument executed by owner, *S*. 8, 15.

C

Carvings, Power to Local Government to control moving of sculptures, or like objects, *S*. 18, 19, 20.

Purchase of sculptures, or like objects by the Local Government, *S*. 19, 20.

Collector, Acquisition of rights in or guardianship of an ancient monument, *S*. 4, 12, 13.

Preservation of ancient monument by agreement, *S*. 5, 13, 14.

Enforcement of agreement, *S*. 7, 14, 15

Application of endowment to repair of an ancient monument, *S*. 9, 15.

Commissioner, The owner of any protected monument may, by written instrument, constitute the, *S*. 4, 12, 13.

Maintenance of certain protected monuments, *S*. 11, 16, 17.

Voluntary contributions, *S*. 12, 17.

Relinquishment of Government rights in a monument, *S*. 14, 17.

Compensation, Assessment of market value or, *S*. 21, 21—23.

Mode of assessment—Antiquities not proved to have any market value, *X—I*, 22.

Agreement of Judge and assessors as to amount of—No appeal lies, *N*, 23.

D

Definition, Ancient monument, *S*. 2, 10.

Antiquities, *S*. 2, 11.

Commissioner, *S*. 2, 11.

Maintain and maintenance, *S*. 2, 11.

Land, *S*. 2, 11.

Owner, *S*. 2, 11.

E

Endowment, Application of, to repair of an ancient monument, *S*. 9, 15.

Excavation, Power to Local Government to control, *S*. 20, 21.

G

Government, Protection of place of worship from misuse, pollution or desecration, *S*. 13, 17.

Relinquishment of, rights in a monument, *S*. 14, 17.

Governor General in Council, Power to, to control traffic in antiquities, *S*. 17, 18, 19.

Power to make rules, *S*. 23, 23.

J

Jurisdiction, Offence under the Act, *S*. 22, 23.

L

Local Government, Ancient monuments, declared protected monuments, *S*. 3, 11, 12.

Notification by, *W*, 12.

Compulsory purchase of ancient monument, *S*. 10, 16.

Local Government—(Concluded).

- Power to, to control moving of sculptures, carvings or like objects, S. 18, 19, 20.
- Notification by, 20.
- Purchase of sculptures, carvings or like objects by the, S. 19, 20, 21.
- Power to, to control excavation, S. 20, 21.
- Power to make rules, S. 23, 23.

M

Market value, Assessment of, or compensation, S. 21, 21—23.

Antiquities not proved to have—Compensation—Mode of assessment, E—I, 22.

Minor, Disqualified assessor—Waiver by guardian of objection, M, 23.

Monument, Relinquishment of Government rights in a, S. 14, 17.

Interference with—Penalties, S. 16, 18.

N

Notification, by Local Government, W, 12.

by Local Government, 20.

under, S. 20, 21.

O

Owners, under disability not in possession, S. 6, 14.

P

Penalties, S. 16, 18.

Procedure, to be followed—Absence of nominated assessor, 22.

Protected monument, Preservation of, to be viewed as public purpose, 16.

Maintenance of certain, S. 11, 16, 17.

Voluntary contributions, S. 12, 17.

Right of access to certain, S. 15, 18.

Public purpose, Preservation of protected monument, to be viewed as, Y, 16.

not defined—Left to discretion of Government, X, 16.

— *servant*, Protection to, acting under Act, S. 24, 23.

R

Rules, General power to make—*Bona fides* acts protected, V, 10.

Madras, 23.

Power to make, S. 23, 23.

S

Sculptures, Power to Local Government to control moving of, S. 19, 19, 20

Purchase of, S. 19, 20, 21.

T

Traffic, Power to Governor-General in Council to control, in antiquities, S. 17, 18, 19.

V

Voluntary contributions, S. 12, 17.

W

Witness, Assessor is not competent to be a, L, 23.

Words and phrases, Meaning of—Ancient monument, S. 2, 10, 11

Antiquities, S. 2, 11.

Commissioner, S. 2, 11.

Maintain and maintenance, S. 2, 11.

Land, S. 2, 11.

Owner, S. 2, 11.

Worship, Protection of place of, from misuse, pollution or desecration, S. 13, 17.

THE INDIAN COPYRIGHT ACT, 1847.

(ACT XX OF 1847).

(WITH THE CASE-LAW THEREON)

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THE INDIAN COPYRIGHT ACT, 1847.

(ACT XX OF 1847).

CONTENTS.

PREAMBLE.

SECTIONS.

1. Duration of Copyright in book published in author's lifetime.
Proprietorship.
In book published after author's death.
Proprietorship.
2. Power to license republication when Copyright proprietor refuses.
3. Registry of Copyright, assignments and licenses.
Inspection.
Giving copies.
4. [*Repealed.*]
5. Copyright proprietor's right to make entries in registry.
Fee.
Assignment of Copyright by entry in registry.
6. Application by person aggrieved by entry in registry for order to vary or expunge it.
7. Liability for infringement of Copyright.
8. Notice to be given by defendant to plaintiff in suit for infringing Copyright.
Particulars to be stated in notice when right of plaintiff is denied.
- Effect of omission.
9. Particulars to be stated in defendant's answer to suit.
Effect of omission.
10. Copyright in encyclopædia, review, etc.
Consent of author to publication singly.
Employe's right to publish separately.

SECTIONS.

11. Rights of proprietor of Copyright on making entry in registry.
12. Proprietorship of copies of book illegally printed.
13. Right of Copyright proprietor to sue for and recover copies or damages.
14. Entry in registry to be made before Copyright proprietor can proceed under Act.
Omission to make entry not to affect Copyright, etc.
15. Plea by defendant and special evidence in actions for things done under Act.
Defendant to have full costs if successful.
16. Limitation of criminal proceedings for breach of Act.
17. [*Repealed.*]

SCHEDULE.—No. 1.—ORIGINAL ENTRY OF PROPRIETORSHIP OF
COPYRIGHT OF A BOOK.

No. 2.—FORM OF ENTRY OF ASSIGNMENT OF COPY-
RIGHT IN ANY BOOK PREVIOUSLY REGIS-
TERED.

THE INDIAN COPYRIGHT ACT, 1847.

(ACT XX OF 1847.¹)

(Passed on the 18th December, 1847).

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act	How affected.
1847	XX	Copyright Act	... Rep. in part, Act XVII of 1862. Act XIV of 1870. Act IX of 1871. Act XVI of 1874. ² Act XII of 1876. Act I of 1879. Declared in force throughout British India, except as regards the Scheduled Districts, Act XV of 1874, S. 3.

An Act for the encouragement of learning in the Territories subject to the Government of the East India Company, by defining and providing for the enforcement of the right called Copyright therein.

WHEREAS doubts may exist whether the right called Copyright³ can be enforced by the common law of England in those parts of the territories subject to the Government of the East India Company into which the common law of England has been introduced;

And whereas doubts may exist whether the said right can be enforced by virtue of the principles of equity and good conscience in the other parts of the territories subject to the Government of the East India Company;

And whereas for the encouragement of learning it is desirable that the existence of the said right should be placed beyond doubt, and that the said right should be made capable of easy enforcement in every part of the said territories;

And whereas it is doubtful whether the Act of Parliament 5 & 6 Victoria, cap. 45, entitled "*An Act to amend the Law of Copyright*," although such Act extend to every part of the British dominions, has made appropriate and sufficient provision for the

<sup>5 and 6 Vict.,
c. 45</sup>

enforcement in every part of the said territories subject to the Government of the East India Company of the said right by proprietors thereof, and whether the said Act of Parliament has made provision for the enforcement of the said right by or against any persons not being subject to the jurisdiction of the Courts established by Her Majesty's Charter ;

(Notes).

1.—'Act XX of 1847.'

(1) Short title.

"The Indian Copyright Act, 1847"—See the Indian Short Titles Act, 1897 (XV of 1897). A

(2) Places where Act has been declared to be in force.

Act XX of 1847 has been declared to be in force in the whole of British India, except the Scheduled Districts by the Laws Local Extent Act, 1874 (XV of 1874), S. 3. B

It has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), S. 4 (1), Sch. I.

It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts, namely:—

Jaunsar Bāwar	...	See Gazette of India, 1879, Pt. I, p. 382
The scheduled portion of the Mirzapur District.	...	Do. " " p. 383.
Aden	...	Do. " " p. 434.
The District of Sylhet	...	Do. " " p. 631.
The rest of Assam except the North Lushai Hills).	...	Do. 1897, " p. 299.
The Scheduled Districts of the Central Provinces	...	Do. 1879, " p. 771.
Sind	...	Do. 1880, " p. 672.
West Jalpaiguri	...	Do. 1881, " p. 74.
The Districts of Hazaribagh, Lohardaga [now called the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44] and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum	...	Do. " " p. 504.
The Island of Perim	...	Do. 1886, " p. 5.

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan. Portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat now form the Northwest Frontier Province, see Gazette of India, 1901. Pt. I, p. 857, and *ibid*, 1902, Pt. I, p. 575 ; but its

1.—“ Act XX of 1847.”—(Concluded).

application has been barred in that part of the Hazara District known as Upper Tanawal, but the Hazara (Upper Tanawal) Regulation (2 of 1900, S. 3) ...

See Gazette of India,	1885, Pt. I,	p. 48.
The District of Lahaul	...	Do.
1886,	„	p. 301.
The Scheduled Districts in Ganjam and Vizagapatam.	...	Do.
1898,	„	p. 870.

It has been extended, by notification under S. 5 of the same Act, to the following Scheduled Districts, namely:—

The Districts of Kumaon and Garhwal	...	See Gazette of India.	1876, Pt. I,	p. 606.
The North-Western Provinces Tarai	...	Do.	„	„
				p. 506.

(3) Act XX of 1847, a reproduction of 5 and 6 Vict. Cap. 45.

The Indian Act XX of 1847 is a reproduction of 5 and 6 Vict. Cap. 45, with certain necessary alterations. 19 B. 557 (567). **C & D**

N.B.—See now the English Copyright Act of 1911, (1&2 Geo. V, C. 46) which has replaced 5 and 6 Vict. Cap. 45.

It will be sufficient to consider the terms of the English statute. *Ibid.*

2.—“Preamble.”

(1) Preamble.

The preamble is clearly part of a Statute, see Hardcastle on Statutory Law, p. 207 *et seq.* “Two propositions are quite clear, one that a preamble may afford useful light as to what a Statute intends to reach, and the other that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment.” Per *Halsbury, L.C., Powell v. Kempton Park* (1899), A.C. 143, 157. **E**

(2) Preamble, how far a guide in construction of statutes.

(a) The preamble of a Statute is the key to open the meaning of the makers of the Act and the mischiefs it was intended to remedy. 9 C.P.L.R. 65 (67); *Salkeld v. Johnston*, 3 Q.B. 313. **F**

(b) The preamble lays down the limitation and restriction, subject to which the enactment is passed. *Tarquand v. Board of Trade*, 11 App. Cas. 286. **G**

(c) It is always permissible to refer to the preamble for the purpose of keeping the effect of the Act within its real scope, as it usually states, or professes to state, the intention of the legislature in passing the enactment. 9 W.R. 402 (404), 7 C. 333, (336) = 9 C.L.R. 209; 6 C. 707 (708) = 8 C.L.R. 52. **H**

(d) But the preamble cannot, unless there be something inconsistent with the spirit of the Act, be taken to cut down its express provisions. *Thisleton v. Frewer*, 31 L.J. Ex. 230; 3 B.H.C.R. O.C. 45 (47). **I**

(e) The preamble may be consulted, in case of doubt, as an index to the intention of legislature, though not conclusive as a statement of extrinsic fact. 4 Bom. L.R. 547 (553); 11 A. 262; 11 B. 551 (552); 9 B.H.C. (O.C.) 205 (215). **J**

(f) The preamble must be read with the sections of the Act. 4 C.W.N.ccxvi. **K**

2.—“Preamble.”—(Concluded).

- (g) The purpose of a preamble is to indicate what, in general terms, was the object of the legislature in passing the Act. 11 A. 262 (266). **L**
- (h) But it may well happen that these general terms will not indicate or cover all the mischief which the enacting portions of the Act provide for. (*Ibid*). **M**
- (i) In many cases, it has been held that the remedy provided in the statute has been intended to be more extensive than was necessary to get rid of the mischief to which the preamble relates. 14 C. 176 (183). **N**
- (j) Thus, though the preamble of the Statutes 4 and 5 Ph. and M. Ch. 8, spoke only of the Act being directed to the abduction of the heiresses and of other girls with fortune, yet the body of the Act was applicable to and made penal the abduction of all girls under the age of 16. (See Maxwell's Interpretation of Statutes, p.58 Ft, seq., cited in 11 A.262 (266) **O**
- (k) If the preamble provides for a wider mischief than the bill in its sections enacts, those sections should not be given a wider scope than the language, properly interpreted, justifies. 14 A. 145 (154). **P**
- (l) A construction of an Act far beyond its object, as stated at length in the preamble, should not be made, unless distinct words to that effect are used in it. 9 B. H.C.R. 321 (332). **Q**
- (m) Where the language of the enacting sections of a Statute is clear, the terms of a preamble cannot be called in to restrict their operation or to cut them down. 11 A. 262 (266). **R**
- (n) The preamble is no part of an enactment and a mere recital in an Act, either of fact or law, is not conclusive, and Courts are at liberty to consider the fact or the law to be different from the statement in the recital. 2 B. 19 (38); *Reg. v. Haughton*, El. and Bl. 501, **R** But, see *infra*. **S**
- (o) The preamble is, undoubtedly, a part of the Act, and may be used to explain but not to control, the enacting part which often goes beyond the preamble if words are to be found in the former strong enough for that purpose. *Salkeld v. Johnstone*, 1 Hare 196; also *Fellows v. Clay*, 5 Q.B. 318, referred to in 2 M.H.C.R. 322; But see 2 B. 19 (38). **T**
- (3) **Scope of title and preamble.**

The meaning of the title and preamble especially of the preamble of a Code, must be understood to overlie the whole Act, giving colour to, and controlling, its provisions and supplying *pro tanto* the rule for their interpretation. 2 A. 74 (90). **U**

3.—“Copyright.”

I.—Copyright—Definition Meaning.

(1) **Copyright—Definition and nature of.**

Copyright may be defined as the sole and exclusive liberty of printing or otherwise multiplying copies of an original work or composition. Per *Pollock, C.B., Chappell v. Purday* (1845). 14 M. & W. 316. **Y**

(2) **Copyright, meaning.**

(a) Copyright from the Latin *copia*, plenty means, in general, the right to copy, to make plenty. See Bowker's Copyright, p. 1. **W**

(b) In its specific application it means the right to multiply copies of those products of the human brain known as literature and art. (*Ibid*). **X**

3. "Copyright."—(Continued).

1.—Copyright—Definition—Meaning—(Continued).

(3) *Ibid*—Two senses.

Copyright, accordingly, may also mean the right in copy made (whether the original work or a duplication of it), as well as the right to make copies, which by no means goes with the work or any duplicate of it. (*Ibid*). Y

Lord St. Leonards said in the case of *Jeffreys v. Boosey* in 1854; "When we are talking of the right of an author we must distinguish between the mere right to his manuscript, and to any copy which he may choose to make of it, as his property just like any other personal chattel, and the right to multiply copies to the exclusion of every other person. Nothing can be more distinct than these two things. The common law does give a man who has composed a work a right to that composition, just as he has a right to any other part of his personal property; but the question of the right of excluding all the world from copying, and of himself claiming the exclusive right of for ever copying his own composition after he has published it to the world, is a totally different thing." p. 2. (*Ibid*). Z

Baron Parke, in the same case, pointed out expressly these two different legal senses of the word copyright, the right in copy, a right of possession, always fully protected by the common law, and the right to copy, a right of multiplication, which alone has been the subject of special statutory protection. (*Ibid*). A

He says:—"The term 'copyright' may be understood in two different senses. The author of a literary composition, which he commits to paper belonging to himself, has an undoubted right at common law to the piece of paper on which his composition is written, and to the copies which he chooses to make of it for himself, or for others. If he lends a copy to another his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it, or publish it, he has a right to enforce that undertaking. The other sense of the word is, the exclusive right of multiplying copies; the right of preventing all others from copying, by printing or otherwise, a literary work which the author has published. This must be carefully distinguished from the other sense of the word." *Jeffreys v. Boosey* (1854), 4 H.L.C. 920 B

(4) *Ibid*—Blackstone.

Blackstone in his Commentaries of 1767, in which the word copyright seems to have been first used, lays down the fundamental principles of copyright as follows:—

"When a man, by the exertion of his rational powers, has produced an original work, he seems to have clearly a right to dispose of that identical work as he pleases, and any attempt to vary the disposition he has made of it appears to be an invasion of that right. Now the identity of a literary composition consists entirely in the sentiment and the language; the same conceptions, clothed in the same words, must necessarily be the same composition; and whatever method be taken of exhibiting that composition to the ear or the eye of another, by recital, by writing or by printing, in any number of copies, or at any period of time, it is always the identical work of the author which

3.—“ Copyright ”—(Continued).

I.—Copyright—Definition—Meaning—(Concluded).

is so exhibited; and no other man (it hath been thought) can have a right to exhibit it, especially for profit, without the author's consent. This consent may, perhaps, be tacitly given to all mankind, when an author suffers his work to be published by another hand, without any claim or reserve of right, and without stamping on it any marks of ownership; it being then a present to the public, like building a church or bridge, or laying out a new highway. ” See Bowker's Copyright, p. 2. C

II.—Subject matter of copy right.

(1) Copyright—Subject matter in general.

- (a) The subject-matter of copyright should include, in the nature of things, those products of invention, creations of the human brain, which are realized and utilized immaterially through material records, and not, as in the case of patents, materially through the material itself. Bowker's Copyright, p. 63. D
- (b) Copyrightable works, in brief, are those which appeal from the imagination to the imagination or in which intellectual labour combines immaterial product into new form. (*Ibid*). E
- (c) The Copyright is not merely in the form of words which are expressive of the intellectual creation, but in the intellectual conception which is so expressed. Copinger's Law of Copyright, 4th Ed., p. 30. F
- (d) There can be no Copyright in an intellectual creation however defined in the author's mind, unless embodied in written or spoken language, then only can it possess the attributes of property. (*Ibid*). G

(2) Whether work must be original.

- (a) In order to acquire a copyright in a work it is necessary that it should be original, in the sense of being novel. (*Ibid*). H
- (b) Thus, Mr. Curtis lays it down that an author seeking to protect his work must show something to have been produced by himself; whether it be a purely original thought or principle unpublished before, or a new combination of old thoughts, and ideas, and sentiments, or a new application or use of known and common materials.” See his work on Copyright, chap. 5. I
- (c) “ In whatever way he claims the exclusive privilege accorded by those laws, he must show something which the law can fix upon as the product of his, and not another's labour, (*Ibid*). See also *Chappell v. Purday* (1845), 14 M. & W., p. 316; *Dick v. Yates* (1881), 18 Ch D. 77; *Caird v. Sims* (1887), 12 A. C. 326, 343; *Leslie v. Young* (1894) A. C. 335. J
- (d) The Copyright Act, however, says nothing about originality. Copinger's Law of Copyright, 4th Ed., p. 30. K

(3) Original work defined.

- (a) A work of an original character has been defined as “ being a work of imagination or invention on the part of the author or original in respect of its being a work treating of a subject common to mankind,

3.—“Copyright”—(Continued).

II.—Subject matter or copyright—(Continued).

such as history, or other branches of knowledge varying much in their mode of treatment and in which the hand of the artist will be readily discerned.” *Spiers v. Brown*, (1858) 6 W.R. 352; per *Wood V.C.* **L**

N.B.—In that case, a compiler of a dictionary was held to have used another work but to have bestowed such mental work upon it as to make it original.

(8) “The matter must be original, it must be a composition of the author something which has grown up in his mind, the product of something which, if it were applied to Patents Rights would be called” invention. Per *Tush, L.J.*, *Dicks v. Yates*, 18 Ch. D. 76 (92). **M**

(4) Whether a reporter is entitled to copyright in his *verbatim* report of a public speech.

The plaintiffs were the proprietors of the ‘Times,’ and the defendant published a book called ‘Appreciations and Addresses delivered by Lord Rosebery,’ which contained practically *verbatim* copies of the reports in the ‘Times’ of five speeches delivered by Lord Rosebery during the years 1896 and 1898. The reports of these speeches had been obtained in the usual way by the ‘Times’ sending their reporters to the meetings, the speeches being taken down *verbatim* in shorthand and transcribed. The defendant admitted that he had used in preparing his work cuttings from the ‘Times,’ and in four cases the speeches appeared in his book without any alteration whatever. Lord Rosebery made no claim to copyright in any of the speeches, and the ‘Times’ brought their action claiming a declaration that they were entitled to the copyright of the reports in question and an injunction to restrain the defendant from further publishing any book containing copies of them. North, J., granted an injunction, but, upon appeal, the Court of Appeal reversed his decision, holding that the Copyright Act was passed to protect authors, not reporters, and that shorthand reporters are not authors. “If,” said Linley, J., “the reporter of a speech gives the substance of it in his own language: if, although the ideas are not his, his expression of them is his own and not the speaker’s, with immaterial differences, the reported speech would be an original composition, of which the reporter would be the author, and he would be entitled to copyright in his own production.....But we have not to deal with speeches re-cast by the reporter. He has reproduced to the best of his ability, not only the ideas expressed by the speaker, but the language in which the speaker expressed those ideas. In other words, we are dealing with the most accurate report of the speaker’s words which the reporter could make. No doubt it requires considerable education and ability to make a good report of any speech. But an accurate report is *not an original composition*, nor is the reporter of a speech the author of what he reports.” *Walter v. Lane*, (1892), 2 Ch. 749, 772. **N**

The plaintiffs thereupon appealed to the House of Lords, and were successful in obtaining a reversal of the decision of the Court of Appeal. (*Ibid*). **O**

In the course of his judgment in the House of Lords, Lord Halsbury, L.C., made the following remarks: “I observe that the Court of Appeal

3.—"Copyright"—(Continued).

II.—Subject matter of copyright'—(Continued).

introduces the words 'original composition' as if those were the words of the statute; and at another part of the judgment it is said that 'the report and the speech reported are, no doubt, different things, but the author or publisher of the report is not the author of the speech reported, which is the only thing which gives any value or interest to the report.' The sentence is a little difficult to construe, but, as I understand it, it means to convey that the thing to which the statute gives protection must be of some value or interest. Again, I am compelled to point out that such words are not to be found in the statute. The producer of this written composition is, to my mind, the person who is the author of the book within the meaning of the statute, and, as I have pointed out, the words 'original composer' are not to be found in the statute at all; and, as I understand, the judgment of the Court of Appeal is entirely based on the thing protected being an original composition in the sense that the person who claims the protection of the statute must not have obtained his words or ideas from somebody else, but must be himself an original author in the sense in which that word is generally used in respect of literary composition." (*Ibid.*) (1900) A. C., pp. 546, 547. P

Later on he says: "though I think in these compositions there is literary merit and intellectual labour, yet the statute seems to me to require neither, nor originality either in thought or in language. . . I do not find the word 'original' in the statute, or any word which imports it, as a condition precedent, or makes originality of thought or idea necessary to the right." In the Lord Chancellor's view copyright "is given by the statute to the first producer of a book, whether that book be wise or foolish, accurate or inaccurate, of literary merit or of no merit whatever." (*Ibid.*) p. 549. Q

Likewise, Davey, L.J., did not think "the fact that the subject-matter of the report had been 'made public property, or that no originality or literary skill was demanded for the composition of the report, have anything to do with the matter, . . . but it is a sound principle that a man shall not avail himself of another's skill, labour, and expense by copying the written product of it." (*Ibid.*), p. 552. *Collis v. Cater*, (1898), 78 L.T. 613. R

(5) Common source of information—Independent labour.

(a) Common sources of information are open to all. The likeness in the results obtained does not prevent copyright provided independent labour has been bestowed. See *Kelly v. Morris*, L.R. Eq. 687. S

(b) Copyright may be claimed by an author of a book who has taken existing materials from sources common to all writers, and arranged and combined them in a new form, and given them an application unknown before. For, in making the selection, arrangement, and combination, he has exercised skill and discretion, and in producing thereby something that is new and useful he is entitled to the exclusive enjoyment of his production. Copinger's Law of Copyright, 4th Ed., p. 34. T

(c) Books made and composed in this manner are therefore the proper subjects of copyright; and the author of such a book has as much right in his plan, arrangement, and combination of the materials collected and

3.—“Copyright”—(Continued).

II.—Subject matter of copyright—(Continued).

presented, as he has in his thoughts, sentiments, reflections and opinions, or in the modes in which they are therein expressed and illustrated; but he cannot prevent others from using the old material employed in such combination for a different purpose. *Clifford, J., Lawrence v. Dana*, 2 Am. L.T.R. (N.S.) 423. **U**

- (d) Where authors have written upon the same subject, and have derived their information from common sources, it is necessary in order to prove infringement, to show that substantial passages from the plaintiff's work have been actually copied, or copied with mere colourable alterations. *Pike v. Nicholas*, 1869, 5 Ch. App. 251. **V**

- (e) Where an author originates a work in the same general form as another, he must do so from his own resources, and make the work so originated a work of his own by his own labour and industry. *Jarold v. Houston*, 1857, 3. K & J. 708. **W**

- (f) There may be a copyright in a street directory. *Kelly v. Morris* (1866), L. R. 1 Eq. 697. **X**

- (g) “In the case of a dictionary, map, guide-book, or directory, when there are certain common objects of information, which a subsequent compiler is bound to set about doing for himself that which the first compiler has done. In cases of a road-book, he must count the mile-stones for himself. In the case of a map of a newly discovered island, he must go through the whole process of triangulation, just as if he had never seen any former map, and, generally he is not entitled to take one word of the information previously published without independently working out the matter for himself, so as to arrive at the same result from the same common sources of information, and the only use that he can legitimately make of a former publication is to verify his own calculations and results when obtained.” *Kelly v. Morris*, L.R. 1 Eq. 697 (701). **Y**

- (h) “Whilst all are entitled to resort to common sources of information, none are entitled to save themselves trouble and expense by availing themselves for their own profit of other men's works.” *Per Langdale, M.R., Lewis v. Fullerton*, (1839) 2 Beav. 6 (8). **Z**

- (i) In such cases the intention of the person copying and the nature of the work must be taken into consideration. *Bradbury v. Cotton*, L.R. 8 Ex. 1. **A**

(6) Literary composition.

- (a) Copyright extends to almost all written forms of expressions with reference to all literary composition. *Chilton v. Progress Printing and Publishing Co.*, (1895) 2 Ch. 29 (33). **B**

- (b) Copyright has nothing to do with merit or originality. *Walter v. Lane*, (1900), A C. 539 (552). **C**

- (c) It does not extend to methods, schemes or systems. *Hollinrake v. Truswell*, (1894), 3 Ch. at p. 427. **D**

- (d) Though there may be copyright in the language in which an opinion is expressed, yet there can be no copyright in the opinion itself. *Chilton v. Progress Printing and Publishing Co.*, (1895), 2 Ch. 29. **E**

3.—“Copyright”—(Continued).

II.—Subject matter or copyright—(Continued).

(7) Literary work.

- (a) A —, held to afford either information, instruction or pleasure in the form of literary enjoyment. *Hollinrake v. Truswell*, (1894) 3 Ch. at p. 428. **F**
- (b) Headings in a directory denoting different trades could be the subject of copyright. *Kelly v. Morris*, L.R. 1 Eq. 692. **G**
- (c) A photograph album containing coloured drawings with a short description of each is not a —. *Schone v. Schmincke*, 33 Ch. D. 546. **H**
- (d) A so-called book consisting of an envelope on the outside of which a title was printed and containing a piece of cardboard so cut that held up to the light it cast a shadow of a well-known picture together with a verse from Longfellow held not to be a—. But see *Grace v. Newman*, L.R. 19 Eq. 623. **I**
- (e) So also are sporting tips. *Chilton v. Progress Printing and Publishing Co.*, (1895), 2 Ch. 29 (31). **J**
- (f) So also a particular mode of ruling a book for scoring purposes. *Plage v. Wisden*, 1869 (20 L.T. 435). **K**
- (g) Similarly specification of patents. *Wyat v. Bernard*, (1814) 3 Ves and B. 77. **L**

(8) Title of a book.

- (a) The name or—is not the subject matter of copyright, unless, in form and language it constitutes a literary composition of the author. See Halsbury's Laws of England, Vol. VIII, p. 143. **M**
- (b) In *Weldon v. Dicks* (1878), 10 Ch. D. 247, *Malins, V. C.* held that the title of a book is a part of the book and as much the subject of copyright, as the book itself. See *Mack v. Peter* (1872), L.R. 14 Eq. 431. **N**
- (c) The decision in *Weldon v. Dicks*, *supra* was considered by the Court of Appeal (*Dicks v. Yates*, (1881), 18 Ch. D. 76, C.A.), where it was remarked that the Vice-Chancellor did not distinguish “passing off” (that is, selling a book under a title calculated to produce the impression that it is the work of some one other than the author, which is a violation of a Common Law right, from an infringement of statutory copyright; and from the judgments, it may be inferred that, as a general rule, there cannot be any copyright in the name of a book. See also *Schone v. Schmincke*, (1886), 33 Ch. D. 546. **O**
- (d) There is no copyright in the name of a newspaper or periodical, but the adoption of the name, or a similar name by another newspaper may be restrained on the ground that it is misleading to purchasers. *Licensed Victualler's Newspaper Co. v. Bingham*, 1888, 38 Ch. D. 139, C. A. **P**
- (e) The plaintiff must show, however, that his property would be injured by the similarity of the name. *Borthwick v. Evening post*, (1888), 37 Ch. D. 449, C.A. **Q**

N.B.—The same principle is applicable to novels and every kind of book. *Hutchings v. Steard* (1881), W.N. 20.

3.—“Copyright”—(Continued).

II.—Subject-matter or copyright—(Continued).

(9) Adoption of a *nom de plume*.

The — which is identified with a particular writer, may be restrained for the same reason, but it is not a subject for copyright. *Land v. Greenberry*, (1908) 24 T.L.R. 441. **R**

(10) Abridgment.

(a) An abridgment is an epitome of the work abridged.

(b) “To constitute a true and proper abridgment of a work the whole must be preserved in its sense and thus the act of abridgment is an act of understanding employed in conveying a larger work into a smaller compass.” *Gilbert v. Newberry*, *Lofts Rep.* 775. **S**

(c) Where the abridgment is a real condensation and the result of intellectual effect expressed in language substantially different it will be protected as an original work. *D’Almaine v. Boosey*, (1835) 1 Y. & C. Ex. 288. **T**

(d) The abridgment must be real condensation, and not mere extracts of the essential parts constituting the chief value of the original work. *Dickens v. Lee*, (1844), 8 Jur. 183. **U**

(e) “It is a nice question what shall be deemed such a modification of an original work as shall absorb the merit of the original in the new composition. No doubt such a modification may be allowed in some cases, as in that of an abridgment or a digest. Such publications are in their nature original. Their compiler intends to make of them a new use; not that which the author proposed to make. It must be a *bona fide* abridgment, because if it contains many chapters of the original work or such as made that work most saleable, the maker of the abridgment commits a piracy.” *Ibid*, 301, *per Abinger. J.* U.B. **Y**

(f) An abridged edition of a book is protected by a copyright independent of that in the original work, if the substance of the original work is expressed in language substantially different, so that the abridgment in the result of intellectual effort, and not mere copying. *Gyles v. Wilox*, (1740) 2 Atk. 111. **W**

(g) Where a book is colourably shortened only, it is an evasion of the copyright, and cannot be called an abridgment. *Gyles v. Wilox*, (1740) 2 Atk. 141. **X**

(h) “A fair abridgment is a new book because.....the invention learning and judgment of the author is shown in them. *Ibid*, *per L.C. Hardwicke*. **Y**

(i) A fair and *bona fide* abridgment is in its nature original. *D’Almaine v. Boosey*, (1835) 1 Y. and C. Ex. 288; *Story’s Exors v. Holcombe*, 4 *McLean*, 306. **Z**

(j) The abridgment must represent a legitimate use of the prior publication in the fair exercise of a mental operation deserving the character of original work. *Wilkins v. Aikin*, (1810) 17 Ves. 422. **A**

(k) The author of the original work cannot prevent the publication of any fair and *bona fide* abridgment which is in its nature original and such abridgment will be protected, as original works although unauthorised. *Oldfield Law of Copyright*, p. 18. **B**

3.—“Copyright”—(*Continued*).II.—Subject matter of copyright—(*Continued*).(11) **Compilation—Common sources.**

(a) A compilation may be the subject-matter of copyright. See Halsbury's Laws of England, Vol. VIII, p. 145. C

(b) When a book is compiled from information available to any one, a subsequent compiler is not entitled to copy from the book, but he must go to the common sources of information. (*Ibid*). D

(c) Even booksellers' and other trade catalogues, having descriptive notes for distinctive arrangement and combination, can be copyrighted. Bowker's Copyright, p. 69. E

(d) Compilations of existing materials, from common sources, arranged and combined in an original and useful form, receive the same protection as wholly original matter. (*Ibid*). F

N.B.—Drone schedules English or American judicial constructions extending this principle to :

(i) general miscellaneous compilations ; *Tomson v. Walker*, 1752, cited 1 East 301.

(ii) annotations consisting of common materials ;

(iii) dictionaries ;

(iv) books of chronology ;

(v) gazetteers ;

(vi) itineraries, road and guide books.

(vii) directoria ; *Kelly v. Morris*, (1886) L.R., 1 Eq. 697.

(viii) maps and charts ;

(ix) calendars ;

(x) catalogues ; *Hatten v. Arthur*, (1863) 32 L.J. Ch. 771.

(xi) mathematical tables ;

(xii) a list of hounds ;

(xiii) abstracts of titles to lands ; and collections of

(xiv) statistics ;

(xv) statutory forms ;

(xvi) recipes, and

(xvii) designs ;

(xviii) trotting records ;

(xix) racing charts ;

(xx) newspaper reports of public speeches ;

(xxi) telegraphic codes ; see *Ager v. Collingridge*, (1886) 2 T.L.R. 291.

(xxii) mining reports ;

(xxiii) a tradesman's alphabetical list of wares ; lists of bills of sale.

(xxiv) a list of public documents ;

(xxv) mathematical calculations ;

(xxvi) legal forms ; digests ; *Butternorth v. Robinson*, (1801) 5 Ves. 3607.

(xxvii) an application form for membership ;

(xxviii) compilations of railroad time-tables ; *Leslie v. Young & Sons*, (1894) A.C. 335.

(xxix) commercial circulars, protected by a Canadian decision ;

(xxx) school registers, and

(xxxi) stud book list of horses.

(xxxii) advertisements, *Lamb v. Evans*, (1893) 1 Ch. 218.

[See Bowker's Copyright, pp. 69, 70].

3.—“Copyright—(Continued). ”

II.—Subject matter of copyright”—(Continued).

- (e) On the other hand, the Courts have declined to include as proper subjects of copyright
- (i) methods or plans, as for compiling credit-ratings or systems, as in the case of
 - (ii) shorthand ;
 - (iii) trading stamps or coupons as described in a copyrighted advertising pamphlet, or
 - (iv) of letter-file indexes ;
 - (v) a sleeve pattern chart ;
 - (vi) the face of a barometer ;
 - (vii) a railway ticket designed for punching ;
 - (viii) a day's sporting tips ;
 - (ix) blank books ; or
 - (x) blank forms, as a cricket score-card ; and
 - (xi) monograms. Bowker's Copyright, p. 70.

G-H

(12) Compilation and abridgment.

- (a) An abridgment adopts the same arrangement and conveys the same knowledge in a condensed form. Whereas compilation can neither adopt the arrangement nor convey the same knowledge by the extracts. *Story's Ezors v. Holcombe*, 4 Mc Lean, 306. I
- (b) If compilation involve independent labour they ought to be protected. *Wilkins v. Aikin*, (1810) 17 Ves. 423. J
- (c) It is the duty of the compiler to go to the common original sources of information. *Mattheewson v. Stockdale*, (1806) 17 Ves. 270. K
- (d) For constituting an infringement, proof of substantial copying is necessary. *Spieres v. Brown*, (1850) 6 W.R. 352. L
- (e) A work is none the less copied if the alterations are merely colourable. *Moffat and Paige v. Gill & Sons*, (1902) 86 L.T. 465. M

(13) Copyright in judgments (written).

- (a) In America it is held that there can be no copyright in the written judgments delivered by a Court ; and on principle this seems the only sound doctrine. It seems to be otherwise in England, but any number of persons may take down, or obtain copies of judgments, and publish them without copying from each other. See Collet on Torts. N
- (b) “The right of selecting passages from books of reports (including entire judgments) in treatises upon particular subjects is not disputed. Had it been otherwise decided, the greater part of our law libraries would be much thinned and attenuated, and we should be deprived of many valuable works ; for a considerable portion consists of mere transcripts from books of report.” Copinger's Law of Copyright, Ed., IV, p. 60. O

(14) Digests.

There may be copyright in a Digest or summary of legal proceedings, or in the form in which the principles of a judgment are expressed in the head note of a reported case. *Butterworth v. Robinson*, (1801) 5 Ves. 709. P

3.—Copyright"—(Continued).

II.—Subject matter or copyright—(Continued).

Digest or a compilation differs from an abridgment.

A digest or a compilation consists of selected extracts from different authors; and abridgment is a condensation of the views of the author. The former cannot be extended so as to convey the same knowledge as the original work; the latter contains an epitome of the work abridged, and consequently conveys substantially the same knowledge. The former cannot adopt the arrangement of the works cited; the latter must adopt the arrangement of the work abridged to be a faithful abridgment. The former infringes the copyright if the matter transcribed when published impairs the value of the original book, while a fair abridgment, though it may injure the original is lawful. Copinger's Law of Copyright, Ed. IV, p. 60. **Q**

(14-a) Head-notes of reports.

The digest or report usually included in and known as the head-note, is a species of property which will receive protection. (*Ibid*). **R**

"The head-note, or the side or marginal note of a report," "is a thing upon which much skill and exercise of thought is required to express in clear and concise language the principles of law to be deduced from the decision to which it is prefixed, or the facts and circumstances which bring the case in hand within the same principle or rule of law or of practice." *Per Crowder, J., in Sweet v. Benning*, (1855) 16 C. B. 491. **S**

(15) Editor's copyright in marginal notes.

The editor of legal reports has certainly a copyright in his own marginal notes. Collet on Torts. **T**

(16) Part of work.

The author of a compilation may be entitled to copyright in part of the work, even though he has not an exclusive right to the whole. *Cary v. Longman*, (1801) 1 East. 358. **U**

(17) Non-copyright work—Annotation, etc.

Annotation and additions to a non-copyright work may be protected. *Mason v. Murray*, 1777, cited, 1 East 360. **Y**

(18) Fair quotation.

(a) Quotation of extracts from a book is necessary for the purpose of review, comment, or criticism, and is permissible within reasonable limits; but if carried to the extent of manifesting piratical intention, it may be restrained. *Mawman v. Tegg*, (1826), 2 Russ. 385. **W**

(b) Quotation must be fair and *bona fide*; if extracts of a substantial character are made under the pretence of quotation, so as to be likely to interfere with the sale of the original work, such infringement may be restrained. *Wilkins v. Aldin*, 17 Ves. 422. **X**

(19) Translations.

(a) A translation is an accurate interpretation of the whole work so as to make it known through the medium of the new language. *Wood v. Chart*, 1870 L.R. 10 Eq. 193. **Y**

3.—“Copyright”—(Continued).

II.—Subject matter of copyright—(Continued).

(b) It need not be a literal translation. Additions and omissions which do not substantially alter its character do not prevent its being copyright. *Laurie v. Rened*, (1892) 3 Ch. D. 402, 414. **Z**

(c) There may be a copyright in a translation whether made by, or given to, the person publishing it. Collet on Torts. **A**

(20) No copyright in mere ideas.

Ideas, being neither capable of a visible possession nor of sustaining any one of the qualities or incidents of property inasmuch as they have no bounds whatever, cannot be the subject of property. Their whole existence is in the mind alone; incapable of any other mode of acquisition or enjoyment than by mental possession or apprehension, safe and invulnerable from their own immateriality, no trespass can reach, no tort affect, no fraud or violence diminish or damage them. (*Vates, J.*, in *Millar v. Tayler*, (1769) 4 Burr. 2362; *Abernethy v. Hutchinson*, (1825) 1 Hall & Tw. 28; S.C. in 3 L.J. (Ch.) (O.S.) 209, 213, and see Sir G. Turner, V.C., in *Morison v. Moat*, (1851) 9 Hare 257.) **B**

(21) Copyright however in the material that has embodied the ideas.

(a) When, however, any material has embodied those ideas, then the ideas, through that corporeity, can be recognised as a species of property by the common law. The claim is not to ideas, but to the order of words, and this order has a marked identity and a permanent endurance. The order of each man's words is as singular as his countenance, and although, if two authors composed originally with the same order of words, each would have a property therein, still the probability of such an occurrence is less than that there should be two countenances, that could not be discriminated. The permanent endurance of words is obvious by comparing the works of ancient authors with other works of their day; the vigour of the words is unabated, though other works have mostly perished. Copinger's Law of Copyright, 4th Ed., p. 5. **C**

(b) The intellectual creations of the ancient Greeks and Romans have come to us through many centuries in better preservation than their great works of art; and while many of their stupendous monuments of stone and brass can no longer be distinguished, the identity of their intellectual labours remain unaffected by time. (*Ibid*). **D**

(c) It is true that property in the order of words is a mental abstraction, but so also are many other kinds of property; for instance, the property in a stream of water, which is not in any of the atoms of the water, but only in the flow of the stream. The right to the stream is not the less a right of property, either because it generally belongs to the riparian proprietor, or because the remedy for a violation of the right is by action on the case, instead of detinue or trover. *Mr. Justice Erle*, in *Jeffreys v. Boosey*, (1854), 4 H L.C. 869. **E**

(22) Author's right to the first publication of his own manuscript.

“Ideas are free. But while the author confines them to his study, they are like birds in a cage, which none but he can have a right to let fly; for, till he thinks proper to emancipate them, they are under his own

3.—“Copyright”—(Continued).

II.—Subject matter of copyright—(Continued).

dominion. It is certain every man has a right to keep his own sentiments, if he pleases; he has certainly a right to judge whether he will make them public, or commit them only to the sight of friends. In that state, the manuscript is, in every sense, his peculiar property; and no man can take it from him or make any use of it which he has not authorised, without being guilty of a violation of his property. And as every author or proprietor of a manuscript has a right to determine whether he will publish it or not, he has a right to the first publication; and whoever deprives him of that priority is guilty of a manifest wrong, and the Court have a right to stop it.” *Yates, J.*, in *Millar v. Taylor*, (1769) 4 Burr. 2378; *Forrester v. Walker*, (1741) cited 2 Bro. P.C. 138; *Manley v. Owen*, (1755) cited 4 Burr. 2329; *Webb v. Rose*, (1732) 4 Burr. 2330; *Southy v. Sherwood*, (1817) 2 Mer. 435; *Wheaton v. Peters*, (1834) 8 Peters, S.C.R. (Amer) 591; *Eden on Injunction*, 285; 2 Story, Eq. Jur. S. 943; *Curtis on Copyright*, 84, 150, 159; *Woolsey v. Judd*, 4 Duer (Amer) 385. F

(23) Copyright refused.

There is no copyright in a book which is unfit for sale on the ground of

- (a) immorality; *Baschet v. London Illustrated Standard Co.*, (1900) 1 Ch. 73. G
- (b) blasphemy, *Lawrence v. Smith*, 1822, 1 Jac. 471. H
- (c) or sedition. *Hinie v. Dale*, (1803), cited 2 Camp 28. I
- (d) The Court may refuse protection to a literary composition containing false statements intended to deceive the public. *Slingsby v. Bradford Patent Truck & Trolley Co.*, (1905) W.N. 122. J
- (e) Where a work professes to be the work of a person other than the real author, with the object thereby to induce the public to pay a higher price for it, no copyright can be claimed in it. (*Wright v. Tallis*, 1 C.B. 893).—*Underhill on Torts*. K
- (f) The Courts have indeed denied copyright protection only to works having absolutely no literary quality, such as advertisements (unless they contain original literary matter) and advertising cuts, labels, blank books, or blank forms. *Bowker's Copyright*, p. 69. L

(24) Copyright—Personal property.

Copyright passes on the death of the proprietor to his personal representatives. In the case of a book first published after the death of the author, the copyright belongs to the owner of the author's manuscripts from which the book is first published. See *Macmillan & Co v. Dent*, (1907) 1 Ch. 107. C.A. M

(25) Copyright, nature of right of—Rights of person possessing the right.

The nature of right of an author in his works is analogous to the rights of ownership in other personal property, and is far more extensive than the control of copying after publication in print, which is the limited meaning of copyright in its common acceptation, and which is the right of an author, to which the statute of Anne relates. Thus, if after composition the author chooses to keep his writings private, he

3.—“Copyright”—(Continued).

II.—Subject matter of copyright—(Concluded).

has the remedies for wrongful abstraction of copies analogous to those of an owner of personalty in the like case. He may prevent publication; he may require back the copies wrongfully made; he may sue for damages, if any are imported for sale without knowledge of the wrong, still the author's right to his composition would be recognised against the importer, and such sale would be stopped.....Again, if an author chooses to impart his manuscript to others without general publication, he has all the right for disposing of it incidental to personalty. He may make an assignment either absolute or qualified in any degree. He may lend, or let, or give or sell any of his composition, with or without liberty to transcribe, and, if with liberty of transcribing, he may fix the number of transcripts which he permits. If he prints for private circulation only, he still has the same rights, and all these rights he may pass to his assignee. About the rights of the author before publication at common law, all are agreed.” *Wheeler, J., Jeffreys v. Boosey*, (1854) 4 H.L.C. 867; see *Parton v. Prang*, 3 Cliff. (Amer). 548. N

(26) Copyright as monopoly.

(a) Copyright is a monopoly to which the Government assures protection in granting the copyright. It is a monopoly not in the offensive sense, but in the sense of private and personal ownership; the public is not the loser but is the gainer by the protection and encouragement given to the author. Bowker's Copyright, p. 50. O

(b) The whole aim of copyright protection is to permit the author to sell as he pleases and to transfer his rights collectively or severally to such assigns as he may choose. (*Ibid*). P

(c) Copyright is a monopoly only in the sense that any ownership is a monopoly. (*Ibid*). Q

(d) Herbert Spencer says :—

“If I am a monopolist, so also are you; so also is every man. If I have no right to those products of my brain, neither have you to those of your hands. No one can become the sole owner of any article whatever; and all property is ‘robbery.’” (*Ibid*). R

(e) In the copyright debates of 1891, Senator O H. Platt rightly said: “The very essence of copyright is the privilege of controlling the market. That is the only way in which a man's property in the work of his brain can be assured.” (*Ibid*). S

(f) And as Senator Evarts pointed out in the same debate: “The sole question is what we shall do concerning something which is the essential nature of copyright and patent protection, namely, monopoly.” (*Ibid*). T

(g) In discussing patent monopoly and the law of contracts in *Victor Talking Machine Co. v. The Fair*, the United States Circuit Court of Appeals, through Judge Baker, said, in 1903, that “within his domain the patentee is czar.” (*Ibid*). U

(h) Copyright being in essence a monopoly giving to the copyright proprietor “exclusive rights,” as the constitution provides, the only limitation upon it should be that indicated in the constitution which confines protection to “limited times.” Bowker's Copyright, p. 51. V

3.—“Copyright”—(Concluded).

III. Copyright, acquired by whom.

(1) Copyright, who may acquire.

The author of any book published during his life-time or his assignee acquires a copyright for the period provided from the date of the first publication. See Halsbury's Laws of England, Vol. VIII, p 139. **W**

(2) Copyright—Ownership—Author.

The author is the person primarily entitled to copyright. He may sell or otherwise transfer his production before it is copyrighted, in which case the new proprietor obtains all the common law rights of property, both in the manuscript and its publication, including the right to copyright. Bowker's Copyright, p. 95. **X**

IV. Copyright, Infringement of.

Invasion of literary property three-fold.

(a) The invasion of literary property may be three-fold—(i) open piracy where there is a simple re-printing of another's book; (ii) literary larceny, where one man steals for his own book the substance and matter of another book; and (iii) ordinary fraud, where one man sells book under the name or title of another's book, when it is not such at all. Collet on Torts. **X-1**

(b) The Copyright Act protects against the first two wrongs, and the third is a fraud at common law apart from any such Act. (*Ibid.*) **Y**

1. It is therefore hereby enacted that the Copyright in every

book ¹ published ² in the lifetime of its author ³ within the said territories after the passing of the Act of Parliament 3 & 4, Wm. IV, cap. 85, entitled “An Act for effecting an arrangement

with the East India Company and for the better government of His Majesty's Indian Territories till the 30th day of April, 1854,” shall endure for the natural life of such author, and for the further

Proprietorship.

term of seven years commencing at the time of his death, and shall be the property of such author and his assigns: Provided always that, if the said term of seven years shall expire before the end of forty-two years from the publication of such book, the Copyright shall in that case endure

for such period of forty-two years; and that the

In book published after author's death.

Copyright in every book published after the death of its author and after the passing of the Act of Parliament last aforesaid shall endure for the term of forty-two

Proprietorship.

years from the first publication thereof and shall be the property of the proprietor of the author's manuscript, from which such book shall be first published, and his assigns.

Duration of Copyright in book published in author's lifetime.
3 and 4 Wm. IV, C. 85.

Notes.

Section—Source.

This section is taken from the Copyright Act, 1842, 5 & 6 Vict. C. 45, S. 3. **Z**

1.—“Book.”

(1) “Book”—Definition.

(a) The word “book” covers the great body of copyright property, and has been many times the subject of judicial construction giving the most comprehensive meaning to the term. Bowker’s Copyright, p. 68. **A**

(b) The word “book” includes (i) every volume, part or division of a volume; see Halsbury’s Laws of England, Vol. VIII, p. 142;

(ii) pamphlet, see *Walter v. Howe*, (1881) 17 Ch. D. 708;

(iii) sheet of letter press, see *Walter v. Lane*, (1900) A.C. 539;

(iv) Sheet of music—See Halsbury’s Laws of England, Vol. VIII, p. 143.

(v) Map, chart, or plan, separately published, *Ibid.* **B**

N.B.—Thus, there may be copyright in the wood-engravings of a work, for they are part of the volume. An illustrated catalogue of articles of furniture published as an advertisement by upholsterers, and not for sale, may be the subject of copyright. See Underhill on Torts.

(2) Copyright in design—Statute Law of United Kingdom.

Copyright in design, being a right created by the Statute Law of the United Kingdom, and not thereby expressly extended to India, is a right that cannot be recognized and enforced by the Courts of Law, in British India; and a registered proprietor of a design within the United Kingdom cannot sustain an action against a person who has applied such design or who has sold any article to which such design had been applied in British India. Property in a registered design is a right totally distinct in its nature from that of property in a trade mark. 8 B.L.R. 298=16 W.R. 90. **C**

(3) Property in the title of a book or Newspaper.

It is sometimes said that there can be no copyright in the title of a book or newspaper. This statement, however, is too wide. There appears to be no actual decision to the effect that there can be no copyright in the title of a book, because the question has not arisen for decision. There are dicta to the effect that this kind of copyright can, and that, it cannot, exist. There is an authoritative decision as to the title of a newspaper, and the Court of Appeal has held that there can be no copyright in such a title. In one case (*Dickes v. Yates*, 18 Ch. D. at p. 90) Sir George Jessel said:—“There seems to be a certain amount of confusion in the minds of some counsel and perhaps of some Judges, between copyright and trade-mark. The things are totally distinct.” So far, in fact, rights of property in the trade-mark of books and newspapers have been treated as in the nature of trade-mark and not copyright property. Three cases will illustrate this, and at the same time also shew the limits of the proposition that copyright cannot exist in a title.* See *The Canadian Law Times*. **D**

The first of these cases is *Weldon v. Dicks* (10 Ch. D. 247), decided by Malins, V.C. The plaintiff and the defendant were rival publishers, and the dispute related to the title of a serial story called “Trial and

1.—“Book”—(Continued).

Triumph.” The plaintiff was held entitled to an injunction against the defendant’s publication, on the ground that the plaintiff had the copyright and had suffered damages by the defendant’s use of the title. Malins, V.C., expressed a strong opinion to the effect that a man might have copyright in a title: “The title of the book is part of the bookand is as much the subject of copyright as the book itself.” Reference was made to Thackeray’s *Vanity Fair*, and the Vice-Chancellor said: “A person buying the cheap edition would expect to get Thackeray’s work, and what a fraud it would be if he had got some spurious thing not worth reading.” In *Dicks v. Yates*, (18 Ch. D., at p. 91) Lush, L.J., made some observations on the part of the judgment of Malins, V.C., bearing out Sir George Jessel’s general remark already quoted. Lush, L.J., said: “That was an allegation of a common law fraud, and although the learned Vice-Chancellor did not explicitly put his judgment on that allegation, I cannot help thinking that it influenced his mind from beginning to end, and that he did not distinguish between a violation of a common law right and an infringement of copyright.” (*Ibid*). E

The dispute in *Dicks v. Yates*, (*supra*) the second of the three cases referred to, related to the right to use as the title of a tale the words “Splendid Misery.” Some observations have already been quoted from the judgments delivered in the Court of Appeal. Sir George Jessel expressly said: “Now I could not say that there could not be copyright in a title, as, for instance, in a whole page of title or something of that kind requiring invention. However, it is not necessary to decide that.” Lush, L.J., again said:—“Nor is the question before us whether copyright can exist in the title of a work. The sole question before us is whether there can be copyright in the two words which the defendant has taken—namely, the words ‘Splendid Misery,’—which have been used by the plaintiff as the title of his tale.” Those words, it was held, were a mere “phrase which had long been in public use,” and the plaintiff was held to have no ground for an injunction. The Court of Appeal, it will be noticed, while disapproving of *Weldon v. Dicks*, so far as that case was decided on the ground that copyright may exist in a title, did not in this case decide that such copyright may not exist. (*Ibid*). F

The last of the three cases to be noticed is *Licensed Victualler’s Newspaper Co. v. Bingham*, (38 Ch. D. 139). This was the decision of the Court of Appeal as to copyright in the title of a newspaper already referred to. The plaintiffs had published, and registered at Stationer’s Hall, the first number of a newspaper entitled: “The Licensed Victualler’s Mirror” and shortly afterwards the defendant published another paper under the same title. It was held that the plaintiffs were not entitled to prevent the publication of the defendant’s paper. Cotton, L.J., puts the matter thus: “The cases where such injunctions have been granted depend on this—that the plaintiffs have obtained by user such a title to the name that another person can be restrained from using it, because by using it, he would be passing off his paper as the paper of the plaintiffs.” Lindley, L.J., said: The plaintiffs

1.—“Book”—(Concluded).

must make out an exclusive right to the name. How have they acquired it? The Copyright Acts do not help them, for *Weldon v. Dicks* is on this point overruled by *Dicks v. Yates*. They must then fall back on the old principles, and establish their right by a use which has given them a reputation.” Bowen, L.J., also thought there could be no copyright in the title of a newspaper. (*Ibid*). G

2.—“Published.”

(1) Publication.

(a) With reference to copyright, publication means communication to the public; see *Halsbury Laws of England*, Vol. VIII, p. 139. H

N.B.—As to what amount to—see *Exchange Telegraph Co. Ltd. v. Central News, Ltd.* (1897), 2 Ch. 48.

(b) A literary composition may be published by being printed and sold, or gratuitously distributed to the public or exposed for sale; see *Bonci-cault v. Chatterton*, (1876) 5 Ch. D. 267, C.A., per James, L.J., at p. 275 (*printed and issued to the public*), *McFarlane v. Hulton*, (1899) 1 Ch. D. 884, per *Cozens-Hardy, J.*, at p. 889 (*offered for sale*); *Blanchett v. Ingram*, (1887) 3 T.L.R. 887 (*Gratuitous distribution*). I

(c) “When a right of property in the invention or creation of an author is recognised as an inherent right by the common law,” says Mr. Judge Monell in an American case, *Palmer v. Dewitt*, (1870) 23 *L.T. 823, 325, “it assumes that the thing to be secured and protected is of value to the owner. The law does not regard as property a thing entirely worthless. If a literary composition, therefore, derives its value from, and becomes property because of, the use which can be made of it before the public, and such value is increased or diminished in proportion to the extent of its use, then it becomes very important to know where and when the author’s literary property in it terminates. To give it value, or to make it property, recognised by the common law, the author must be allowed to use it before the public; and if, having submitted it at once to a public hearing, it is to be deemed a publication, so as to take away the proprietary right, and to deprive the author of the benefit of copyright laws, then, obviously, the common law means nothing, and there is no such thing as property in literary work. Can it be said that once delivering a lecture upon a scientific or literary subject, before a public audience, will for ever thereafter deprive the author of his property in the ideas invented or created, and which represent, by a combination of words his meaning? If so, then any one who can obtain the manuscript, or access to it, or who, by employing the art of stenography, or by the exercise of memory, can carry it out of a public lecture-room, may, without the consent or knowledge of the author, appropriate and use, for his own emolument, the literary production of another person. I cannot believe there is so little foundation for, or so narrow a limit to, the proprietary rights of another author in his literary labours. I believe the law intended to secure to him the *beneficial* results of his labours, and to protect him from any piratical invasion of his rights, until he has done some act inconsistent with an exclusive ownership, and which shall amount, in judgment of law, to a publication. There can be no fixed rule determining when an author has surrendered his literary property.” J

2.—“Published”—(Continued).

(2) What constitutes publishing.

- A book which has been sold or leased to subscribers on a contract of restricted use is none the less published. (See the opinion by Chief Judge Parker of the New York Court of Appeals in *Jewellers' Mercantile Agency v. Jewellers' Weekly Pub. Co.*, in 1898, and that by Judge Putnam of the United States Circuit Court in Massachusetts in *Ladd v. Ornard* in 1896, both having reference to credit-rating books leased to subscribers for their individual use). *Broker's Copyright*, p. 53. K

(3) Publication depends on what.

Publication depends upon sale or offer to the public, and it is a question whether the sale or offer of a copyrightable work, as the proceedings or publications of a society, to the members of that society only, constitutes publication, to be passed upon by the Courts in view of the specific facts. (*Ibid*). L

(4) Privately printed work.

A work “privately printed” or with the imprint “printed but not published,” given or even sold by the author to his friends, and not sold generally by his authority, would probably not be held to be published; but the Courts would probably hold that the sale of a work, though “privately printed,” to merely nominal members of a nominal society, made up of the purchasers of the work, would constitute publication and, if without copyright notice, dedication. (*Ibid*). M

(5) Publication—Sale of one copy.

The sale of one copy is as much a publication as the sale of many. Copies of a work issued for private circulation are not published. *Prince Albert v. Strange*, 1849, 2 De G. and Sm. & G. 25. N

(6) Author's right to impose restrictions preventing publication.

- (a) An author may impose restrictions which will prevent a publication, as by giving copies for private perusal or by recitation before a select audience. In the latter case the retention of the author's right depends upon its being either a matter of contract, or an implied condition that the audience are admitted for the purpose of receiving instruction or amusement, and not in order that they may take a full note of what they hear and publish it for their own profit, and for the information of the public at large.” *Caird v. Sime*, 12 App. Cas. 326, *per Lord Watson*. O

- (b) The Act of publication is the action of the author and is not dependent on the act of the purchaser. See *Mifflin v. Dutton*, (1901) 107 Fed. Rep. 708. P

- (c) The printing of a work cannot be publication, because the work may be withheld from the public after being printed. (*Ibid*). Q

(7) Story published in parts in magazine.

The publication of a story in parts in a magazine amounts to publications in book form. (*Ibid*). R

A newspaper or a periodical is published whenever and wheresoever it is offered to the public by the proprietor. *McFarlane v. Hulton*, 1899, 1 Ch. 884. S

2.—“Published”—(Continued).

(8) Artistic work—Exhibition for sale.

An artistic work or design is published if it is publicly exhibited for sale.
Blank v. Footman, (1888) 39 Ch. Div. 678. **T**

(9) What does not amount to publication.

(a) The publication of a work for private purposes and private circulation is not a publication sufficient to defeat the common law right of an author. *White v. Geroch*, (1819) 1 Chitt. 24, 2 B. & Ald. 298, 22 R.R. 786; *Prince Albert v. Strange*, (1849) 2 De G. & Sm. 686; 1 Mac. & Gor. 42; 1 Hall & Tw. 1; *Jeffreys v. Boosey*, (1854) 4 H.L.C. 816. **U**

(b) The words “printed and published,” used in the statutes have reference only to the time at which the author’s exercise of right is to be dated. Copinger’s Law of Copyright, 4th Ed., p. 15. **Y**

(c) And therefore, the circumstance of an author having previously published in manuscript any composition which is afterwards printed, only varies the period of time from which the term of protection is to be calculated. (*Ibid*). **W**

(d) The delivery of a lecture to an audience of persons admitted on payment of a fee, is not deemed a publication. *Abernethy v. Hutchinson*, (1825) 3 L.J. (O.S.) (Ch.) 209; 1 H. & T. 28; *Nicols v. Pitman*, (1884) 26 Ch. Div. 374; *Caird v. Sime*, (1887) 12 App. Cas. 326. **X**

(e) The issue of a document in printed form for private circulation is not publication. *Jeffreys v. Boosey*, (1854) 4 H.L. Cas. 815, 962. **Y**

(f) A lecture delivered by a professor to his pupils is not published. *Caird v. Sime*, (1887) 12 App. Cas. 326. **Z**

(g) Neither is the exhibition of a picture at a public exhibition or gallery, where copying is expressly or impliedly forbidden, nor the exhibition of a picture for the purpose of obtaining subscribers to an engraving. *Turner v. Robinson*, (1860) 10 Ir. Cj. 510. But see *Dalglisk v. Jarvie*, (1850) 2 Mac. & Gor. 231, 2 H. & T. 437, and 25 & 26 Vict., c. 68. **A**

(h) Nor is a dramatic piece published by performance at a Hospital before an audience solely composed of patients, nurses, doctors and their guests. *Duck v. Bates*, (1884) 13 Q.B.D. 843, C.A. **B**

(10) The effect of publication.

On publication, no more passes to the public than an unlimited use of every advantage that the purchaser can reap from the doctrines and sentiments which the work contains. The property in the composition does not pass; for those things which are peculiarly and appropriately the author’s, must remain his until he agrees or consents to part with them by compact or donation; because no man can deprive him of them without his approbation; but the depriver must use them as his when they are not his, in contradiction to truth. For “to have the property” in anything, and “to have the sole right of using and disposing of it,” is the same thing. They are equipollent expressions.” See Copinger on Copyright, 4th Ed., p. 15. **C**

(11) Unpublished work—Property—Publication without consent.

An author or composer of any work unpublished and kept for his private use, has a property in it; to publish that work without his consent gives a

2.—“*Published*”—(Concluded).

good cause of action. If the writer of the document reads it in Court and allows to go upon the file he deprives himself of all right to consider its contents in future as his private property. 45 P.R. 1868. D

3.—“*Author.*”(1) *Author of a work.*

(a) The—is the person who makes or produces the work or to whom the work owns its origin. “The word author involves originating, making, producing, as the inventive or master mind the thing which is to be protected.” *Notlage v. Jackson*, (1883) 11 Q.B.D. 637. E

(b) The writer or compiler of a composition is the author of a literary and dramatic work. *Wallenstein v. Herbert*, (1867) 16 L.T. 453. F

(c) A reporter is the author of a report. *Walter v. Lane*, (1900), A. C. 539. G

(d) “A mere copyist of written matter is not an ‘author,’.....but a translator from one language to another would be so. A person to whom words are dictated for the purpose of being written down is not an ‘author.’ He is the news-agent of the person dictating and requires to possess no art beyond that of knowing how to write.....But an ‘author’ may come into existence without producing any original matter of his ownThe compilation of a street directory.....The table of the times of running of certain trains, and yet in one sense no original matter can be found in such publications. Still, there was a something apart from originality on the one hand and mere mechanical transcribing on the other which entitled those who gave these works to the world to be regarded as their authors.” (*Ibid.*) 554, per Lord James of Hereford. H

(e) The author of a musical work is the composer. *Wood v. Boosy*, (1868) L.R. 3 Q.B. 223, Ex. Ch. I

(f) The author of an artistic work is the person who designs or creates the work or who causes it to be created, as in the case of a person unable to draw but supplying the materials and information and employing another to make the design. *Stannard v. Harrison*, (1871) 24 L. T. 570. J

N.B.—But in the case of a painting, drawing or photograph such an employer would not be the author. *Kenrick v. Lawrence & Co.*, (1890) 25 Q.B.D. 99.

2. And whereas it is expedient to provide against the suppression of books of importance to the public: It is

Power to license re-publication when Copyright proprietor refuses.

enacted that it shall be lawful for the Governor General in Council on complaint made to them that the proprietor of the Copyright in any book

published after the passing of this Act within the said territories has, after the death of its author, refused to re-publish or to allow the re-publication of the same, and that by reason of such refusal, such book may be withheld from the public, to grant a license to such complainant to publish such book in such manner and subject to such conditions as they may think fit, and it shall be lawful for such complainant to publish such book according to such license.

(Notes).

Section—Source.

Cf. the Copyright Act, 1842 (5 & 6 Vict., c. 45), S. 5.

K

3. * * * * * A book of registry,¹ wherein may be

Registry of Copy-
right, assignments
and licenses.

registered, as hereinafter enacted, the proprietorship in the Copyright of books and assignments thereof, and licenses affecting such Copyright,

shall be kept in the office of the Secretary to the Government of India for the Home Department, and shall at all

Inspection.

convenient times be opened to the inspection of

any person on payment of eight annas for every entry which shall be searched for or inspected in the said book *

Giving copies.

*, * Such officer shall, whenever thereunto

reasonably required, give a copy of any entry in such book, certified under his hand, to any person requiring the same, on payment to him of the sum of two rupees, and such copies so certified shall be received in evidence in all Courts and in all summary proceedings, and shall be *prima facie* proof of the proprietorship² or assignment of Copyright or license as therein expressed, but subject to be rebutted by other evidence.

(Notes).

(1) Legislative Changes.

The words "And it is hereby enacted, that" at the beginning of the section and the words "and that" after the word "book" were repealed by the Repealing and Amending Act, 1874 (XVI of 1874).

L

(2) Section—Source.

Cf. the Copyright Act, 1842 (5 & 6 Vict., c. 45), S. 11.

M

1,—"Book of registry."

(1) Registration under Act XXV of 1867.

Registration in the Catalogue of books printed in British India maintained under the provisions of the Press and Registration of Books Act, 1867 (XXV of 1867), is³ deemed an entry in the Book of Registry kept under this Act, and the provisions of this Act as to the Book of Registry apply, *mutatis mutandis*, to that Catalogue. See S. 18 of Act XXV of 1867.

N

(2) Scope of section.

S. 3 provides that a book of registry wherein may be registered the proprietorship in the copyright of books and assignments thereof in India 'should be kept in the office of the Secretary to the Government of India' for the Home Department and certain provisions are made for the right to inspect the same and to deal with the entries made. It is to be noticed that there is no provision as to where at the time the office referred to was to be situated or any restriction as to where the office might be removed. 1 C.L.J. 278 (280, 281)=9 C.W.N. 591.

O

1.—"Book of registry"—(Continued).

(3) The Book of Registry—Entry—Effect.

(a) The entry is deemed equivalent to notice of the existence of the copyright in the particular book or article registered. Copinger's Law of Copyright, 4th Ed., p. 114. F

(b) Unless such entry had been provided, many, through ignorance, would have offended. (*Ibid.*) Q

(4) Negligence to register.

Neglect to register on the part of the official prevents the author having the benefit of the statute as against the public. See *Cassell v. Stiff*, (1856) 2 K. and J. 279. R

(5) Entry must be correct.

(a) The provisions of the Act in respect of registration must be strictly complied with, or the title of the owner of the copyright to sue will be imperilled. Copinger's Law of Copyright, 4th Ed., p. 115. S

(b) Thus, it is essential that the name of the author or composer, if he be the proprietor of the copyright, be correctly stated in the register. (*Ibid.*) T

(c) The insertion in the register of the wrong day of publication, or an inaccurate statement of the names of the publishers, or their firm, renders the entry on the registry invalid. (*Ibid.*) p. 116. U

(d) A proprietor of copyright in a book, registered his book by making an entry, purporting to be pursuant to the Act, but in such entry the exact date of first publication was not stated, the day of the month being omitted, and the month and year only inserted; on his filing a bill to restrain a party from infringing his copyright, the Court held, that the suit could not be maintained, as the entry was defective, there being no entry of the date of first publication as required by the statute, unless in addition to the month and year, the day of the month is also stated. *Mathieson v. Harrod*, (1868) L.R. 7 Eq. 270; 38 L.J. (Ch.) 139; 19 L.T. (N.S.) 629; 17 W.R. 99; *Wood v. Boosey*, *supra*; *Collette v. Goode*, (1878; 7 Ch. Div. 842; *Low v. Routledge*, (1865) 33 L.J. (N.S.) Ch. 717; *Collingridge v. Emmott*, (1887) 57 L.T. 864; W.N. (1887), 216; 4 T.L.R. 99. Y

(6) Full name of firm must be set out.

And where the entry in the registry of the name of the publishers was "Sampson Law, Son, and Marston," whereas the name of the firm was "Sampson Law, Son and Co.," the variance being the addition of the third name of the partner in the firm, instead of the term "Company," the entry was held invalid. Copinger's Law of Copyright, 4th Ed., p. 116. W

(7) Proprietor may be registered as trustee for another.

(a) A person may be properly on the register as proprietor of the copyright who is in fact a trustee for another, but in such a case it must be proved that the copyright is vested in the trustee. Copinger's Law of Copyright, 4th Ed., p. 117. X

(b) "I have no doubt whatever that a trustee in whom a copyright is vested may be registered as the owner, and may sue in that character; but

1.—“*Book of registry*”—(Concluded).

it is impossible for one person to be the owner and another person to be on the register, and for those two persons successfully to sue.”
Fry, L. J., in London Printing Co. v. Cox, (1891) 3 Ch. at p. 903. Y

(8) Original publisher must be registered.

“In my opinion the statute requires something more than registration of the name of the person who happens to be the publisher at the date of the registration: it requires that the name of the person who first published the book should appear, and this for the best of reasons, in order that everybody connected with the registration may ascertain for himself how far the right of a person claiming from or under the first publisher may be successfully challenged.” *Bacon, V. C., in Coote v. Judo, (1883) 23 Ch. D. 727. Z*

(9) Sufficient to enter actual proprietor.

But in registering it is sufficient to enter the first publisher under the trade name of the firm, and the actual proprietor of the copyright at the time of registration without stating who the first proprietor was, or how the copyright devolved upon the present proprietor. See *The London and Printing and Publishing Alliance, Limited, and Keep & Co. v. Cox, (1891) 3 Ch. 291; 7 T.L.R. 738. A*

The “name and place of abode of the proprietor of the copyright,” meant not the original proprietor, but the person who is the proprietor at the time the registration takes place. “What difference, can it make to anybody who the original proprietor was? It may be material to know who the original publisher is, the object being that a person registering may not pass off a fraudulent entry, but that he shall give the public an opportunity of inquiring of the publisher whether it was a genuine transaction, or whether the date has been fictitiously inserted, and therefore it is required that the name of the original publisher should be given, but it does not mean that the original proprietor should be given.” *Weldon v. Dicks, (1878) 10 Ch. Div. 247; “Trial and Triumph.” B*

(10) Correct title must be registered.

The correct title of the book must be entered on the register. *Copinger's Law of Copyright, 4th Ed., p 119. C*

(11) Assignee must register.

In the case of *Liverpool General Brokers Association v. Commercial Press, (1897) 2 Q.B. 1; Trolitzsch v. Rees, (1887) 3 Times L.R. 773, Mr. Justice Kennedy declined to follow a dictum of Cockburn, C. J., expressed in Wood v. Boosey, (1867) L.R. 2 Q.B. 340, 351, to the effect that an assignee of copyright could sue without being entered on the register, holding that such assignee is a “proprietor” and as such must be registered before he can sue. D*

2.—“*Prima facie proof of the proprietorship*”Copy of register *prima facie* evidence.

Such copies shall be received in evidence in all Courts, and in all summary proceedings, and shall be *prima facie* proof of the proprietorship. (*Hildesheimer & Faulkner v. Dunn & Co., (1891) 64 L. T. 452; W.N. (1891), 66; Black v. Imperial Book Co., (1903) 5 Ontario L. R. 184*), or assignment of copyright or license as therein expressed, but subject to be rebutted by other evidence. *Copinger's Law of Copyright, 4th Ed., pp. 114, 115. E*

4. [*Punishment for making false entry in registry, etc.*]
Repealed by Act XVII of 1862.

5. * * * * * It shall be lawful for the proprietor of
 Copyright proprie- Copyright in any book, published after the passing
 3 and 4 Wm. IV, c. 85. tor's right to make of the said Act of Parliament, 3 & 4 Wm. IV,
 entries in registry. cap. 85, to make entry in the Registry Book of the

title of such book, the time of the first publication, and the name
 and place of abode of the publisher thereof, and the name and place
 of abode of the proprietor of the Copyright of the said book, or of
 any portion of such Copyright in the form in that behalf given in
 the schedule to this Act annexed, upon payment
 Fee, of the sum of two rupees to the said security.*

* It shall be lawful for every such registered proprietor to assign
 his interest or any portion of his interest therein¹,
 Assignment of by making entry in the said Book of Registry of
 Copyright by entry such assignment, and of the name and place of
 in registry. abode of the assignee thereof, in the form given
 in that behalf in the said schedule on payment of the like sum; and
 such assignment so entered shall be effectual in law to all intents
 and purposes whatsoever, * * * * and shall be of the same
 force and effect as if such assignment had been made by deed.

(Notes).

(1) **Legislative changes.**

The words "And it is enacted that after the passing of this Act" and the
 words "and that" in S. 5 were repealed by the Repealing Act, 1874
 (XVI of 1874). F

The words "without being subject to any stamp or duty," were repealed by
 S. 2 and Sch. III of the Indian Stamp Act, 1879 (I of 1879). See
 now Act II of 1899. G

(2) **Section—Source.**

Cf. the Copyright Act, 1842 (5 and 6 Vict., c. 45), Ss. 13 and 14, respectively. H

I.—"Proprietor... interest therein."

(1) "Punjab Record"—Urdu translation—Copyright—Infringement.

Where the plaintiff with the permission of and under an arrangement with the
 proprietors of "English Punjab Record" was publishing a periodical
 which was an exact translation of "English Punjab Record" and
 the defendant then published an Urdu translation of the same, *held*
 that the above constituted an infringement of plaintiff's copyright.
 15 P.R. 1893 (*R.*, 46 P.R. 1893). I

N.B.—An exclusive right of translation amounts to an interest under this
 section. (*Ibid*). J

(2) **Proprietor—Assignment.**

The author is the first owner of the copyright except in two cases; (a) in the
 case of an engraving photograph or portrait made for valuable con-
 siderations in which case the person who ordered the work is the first

1.—“*Proprietor... interest therein*”—(Concluded).

owner, (b) When the author is in the employment of some other person and the work was made in the course of the employment, then the employer is the first owner.

N.B.—The author may part with his ownership by assignment also. Oldfield's Law of Copyright, p. 48. K

(3) Assignment of copyright exempted from stamp-duty.

Under S. 5 of the Copyright Act, a registered proprietor may assign his copyright by making entry in a register of such assignment on payment of a sum of two rupees and such assignment is effectual to all intents and purposes without being liable to stamp-duty. The exemption thus declared in the Copyright Act was transferred to Act I of 1879 and has been re-enacted in the Stamp Act of 1899. (See Exemption to Art. 23 in Sch. I of Act II of 1899). L

6. * * * * * If any person shall deem himself aggrieved ¹

Application by
person aggrieved by
entry in registry for
order to vary or
expunge it.

by any entry made under colour of this Act in the said Book of Registry, it shall be lawful for such person to apply by motion ² to the Supreme Court of Calcutta ³, or, if the Court shall not be then sitting, to any Judge of such Court sitting in chambers, for an order that such entry may be expunged or varied. * Upon any such application to the said Court, or to a Judge as aforesaid, such Court or Judge shall make such order for expunging, varying or confirming such entry, either with or without costs, as to such Court or Judge shall seem just; and the said Secretary shall on the production to him of any such order for expunging or varying any such entry, expunge ⁴ or vary the same, according to the requisitions of such order.

(Notes).

(1) Legislative changes.

The words “And it is enacted that” in Ss. 6 and 7 and the words “and that” in S. 6 were repealed by Act XVI of 1974. M

(2) Section Source.

Cf. the Copyright Act, 1842 (5 & 6 Vict., c. 45), Ss. 13 and 14, respectively. N

1.—“*Person... aggrieved.*”

Proprietor of copyright.

A proprietor of the copyright of books is a person aggrieved within the meaning of S. 6 of Act XX of 1847 when he finds that another person has got his name registered in the Catalogue of Books at Bombay in fraud of his rights. 2 C.L.J. 511 = 10 C.W.N. 194 = 33 C. 571. O

2.—“*Motion.*”

Summary proceeding.

There is in the Act no reference to any summary proceeding except the summary proceeding mentioned in S. 6. 2 C.L.J. 511, 514 = 10 C.W.N. 194 = 33 C. 571. P

3.—“*Supreme Court of Calcutta.*”

S. 18, Act XXV of 1867—Jurisdiction—Supreme Court of Calcutta.

- (a) S. 18 of Act XXV of 1867 has not ousted the jurisdiction of the Supreme Court of Calcutta specially vested in it by S. 6 of Act XX of 1847 to entertain an application to have the name of a person who has got his name registered in the Catalogue of Books at Bombay in fraud of the applicant's rights, under the provisions of the Act, expunged from such catalogue; nor has it vested such jurisdiction in the High Court of Bombay. 2 C.L.J. 511=10 C.W.N. 134=33 C. 571. Q
- (b) A Judge of the High Court appointed by the Chief Justice of the Court under S. 14 of the Charter Act (24 and 25 Victoria) to take the work of the Original Side of the Court, has, having regard to Ss. 9, 13 and 14 of that Act, and to S. 36 of the Letters Patent, jurisdiction to try the case. 2 C.L.J. 511=10 C.W.N. 134=33 C. 571. R
- (c) *Per Sala, J.*—The High Court in its Original Jurisdiction is the successor in the direct line of descent of the Supreme Court and all the powers and functions of the Supreme Court now fall to be exercised by the Judge or Judges of the High Court who are appointed by the Chief Justice to exercise the Original Jurisdiction of the Court. 2 C.L.J. 511=10 C.W.N. 134=33 C. 571. S

4.—“*Court...expunge.*”

Act XX of 1847, Ss. 3, 6—Act XXV of 1867, S. 18—Expunging entry from the Catalogue of books kept in Bombay—Jurisdiction of the High Court of Calcutta—24 and 25 Victoria, c. 104, S. 9—Acquiring of copyright in British India by foreigner residing abroad.

- (a) By S. 6 of Act XX of 1847, the only Court having jurisdiction to deal with the Register of Copyrights for the purpose of varying or expunging an entry was the Supreme Court in Calcutta. It had, therefore, jurisdiction over the Book of Registry wherever it happened to be kept. 1 C.L.J. 278=9 C.W.N. 591. T
- (b) By S. 9 of 24 and 25 Vic., c. 104, the High Court of Calcutta took over all the powers of the Supreme Court, including the powers exercised absolutely in respect of any Copyright Register. (*Ibid*). T-1
- (c) *Held* that this Court, therefore, has jurisdiction to order the expunging of entry in the Catalogue of books kept in Bombay under S. 18 of Act XXV of 1867; (*Ibid*). U
- (d) Petitioner applied to the High Court at Calcutta for removal of the respondent's name from the Register of Copyrights kept at Bombay in relation to two publications. The points raised by the respondent were (i) that the High Court of Calcutta had no jurisdiction to entertain the application and order the removal of the respondent's name from the Register kept at Bombay; (ii) that the petitioner was not entitled to the copyright. It appeared that one Omar originally wrote the books, got them printed at Singapore, in British territory, in 1839 and had the books registered at Bombay in 1901. In 1903, he assigned his rights to petitioner, who got his name registered. Prior to such registration, the respondent published the books in India on the allegation that they had been composed by one Fazl in Java and that he (respondent) had an assignment of the copyright from him. Respondent had his name registered in Bombay, before the petitioner had his name registered. Y

4.—“*Court....expunge*”—(Concluded).

Held, (i) that reading Ss. 3 and 6 of Act XX of 1847, the only Court, which then had jurisdiction to deal with the Register, for the purpose of varying or expunging an entry therein, was the Supreme Court in Calcutta. Though, under the Act of 1867, certain alterations were made in the then existing law as regards the keeping of registers, etc., the High Court of Calcutta was vested by the Letters Patent with all the powers exercised by the former Supreme Court, including the powers to deal with registers, notwithstanding the fact that, under the latter Act, registers were authorised to be kept in the different presidencies of India. Hence, the jurisdiction inherited by the Calcutta High Court from the old Supreme Court remained unaffected notwithstanding the new Act. The High Court of Calcutta has thus jurisdiction, even this day, to deal with Registers, wherever they may be kept, in British India; (ii) that, on the evidence adduced, petitioner had an assignment from Omar, who was the real author of the books, and, therefore, petitioner, was entitled to the copyright. 9 C.W.N. 591 = 1 C.L.J. 278. W

7.

Liability
infringement
copyright 1.

for
of

* * If any person ² shall * * * print ³
or cause to be printed, either for sale or export-
ation, any book in which there shall be subsisting
Copyright, without the consent in writing of the
proprietor thereof, or shall have in his possession

for sale or hire any such book so unlawfully printed without such
consent as aforesaid, such offender * * * shall be liable
* * * to a suit ⁴ in the highest local Court ⁵ exercising
original civil jurisdiction. * * *

(Note.)

(1) Legislative changes.

Certain formal words which were repealed by Act XVI of 1874 are omitted.

The words “after the passing of this Act” after “If any persons shall” and the words “in such part of the said territories” at the end of the section, were repealed by the Repealing Act, 1876 (XII of 1876).

The words “if he shall have so offended within the local limits of the jurisdiction of any of the Courts of Judicature established by Her Majesty’s Charter,” after “such offender” were repealed by the Repealing Act, 1876 (XII of 1876).

The words “to a special action on the case in such Court; and if he shall have so offended in any other part of the territories subject to the Government of the East India Company, to a suit in the Zilla Court within the jurisdiction of which he shall have so offended, which shall and may be prosecuted in the same manner in which any other action of damages may be brought and prosecuted there; and if he shall have so offended in any such last-mentioned part of the territories subject to the Government of the East India Company in which there is no Zilla Court,” after “shall be liable” were repealed by the Repealing Act, 1876 (XII of 1876). X

(2) Section—Source.

Cf. the Copyright Act, 1842 (5 and 6 Vict. C. 45), S. 15.

I.—“Liability for infringement of copyright.”

I.—INFRINGEMENT OF COPYRIGHT—GENERAL.

(1) Piracy.

- (a) The word “piracy,” since that gentle craft has disappeared from the high seas, has come commonly into use to mean free-booting with reference to literary property. In this sense it is used as early as 1771 by Luckombe in his history of printing, in which he says: “They would suffer by this act of piracy, since it was likely to prove a very bad edition.” Bowker’s Copyright, p. 251. Y
- (b) It is the comprehensive term now in common and legal use to mean the stealing of an author’s work by re-printing it in full or in substantial part without the authority of the copyright proprietor, and is in fact an infringement at wholesale or otherwise of the author’s exclusive right. (*Ibid*). Z
- (c) This is of course prohibited by the law to the full extent of its jurisdiction and is punishable as prescribed in the law. (*Ibid*). A

(2) Test of piracy.

- (a) “The true test of piracy,” said Judge Shipman in the United States Circuit Court in 1875, in *Banks v. McDivitt*, is “whether the defendant has in fact used the plan, arrangements and illustrations as the model of his own book, with colorable alterations and variations, or whether his work is the result of his own labor, skill and use of common materials and common sources.” Bowker’s Copyright, pp. 251, 252. B
- (b) Judge Story said in 1841, in *Polson v. Marsh*: “If so much is taken that the value of the original is sensibly diminished, or the labours of the original author are substantially, to an injurious extent, appropriated by another, that is sufficient in point of law to constitute a piracy *pro tanto*. The entirety of the copyright is the property of the author and it is no defence that another person has appropriated a part and not the whole of any property.” Bowker’s Copyright, p. 252. C

(3) Piracy—Intention—Test.

- (a) The result, in cases of infringement of copyright, is the true test of the act. Full acknowledgment of the original, and the absence of any dishonest intention, will not excuse the appropriator when the effect of his appropriation is, of necessity, to injure and supersede the sale of the original work; for a man must be presumed to intend all that the publication of his work effects. Wood, V.C., in *Scott v. Stanford* (1867), Law Rep. 3 Eq. 723; *Clement v. Maddick* (1859), 1 Giff. 98; *Millett v. Snowden* 1, West, L. J. (Amer) 240; *Nichols v. Ruggles*, 3 Day (*ibid*) 158; *Story v. Holcombe*, 4 McLean (*ibid*.) 306; McLean, J. Ohio, 1847. D
- (b) ANIMUS FURANDI.
- (i) In some of the cases it will be observed that stress is laid on the existence of the *animus furandi*. *Cary v. Kearsley*, (1802), 4 Esp. 170 & R. R. 846; *Lewis v. Fullarton*, (1839), 2 Beav. 6; *Moffatt and Paige v. Gill and Sons*, (1901), 84 L. T. 452; reversed (1902), 86 L. T. 465. E

I.—“Liability for infringement of copyright”—(Continued).

I.—INFRINGEMENT OF COPYRIGHT—(Continued).

- (ii) The *animus furandi* will be taken into consideration in those cases where it is difficult to ascertain the extent of the copying, in order to determine whether the use made of a protected work by a subsequent author is fair or lawful; *Spiers v. Brown*, (1858), 6 W.R. 352. F
- (c) But the question of piracy cannot properly depend upon the intention of the pirate. The main point must always be what effect will the extracts have upon the original work—how far will they supply its place or injure its sale. If the extracts are such as to render the protected work less valuable, by superceding its use in any degree, the right of the author is infringed, and it can be of no importance to inquire with what intent this was done. Copinger's Law of Copyright, 4th Ed. p. 153. G

(4) Piracy, principles by which a, is judged.

The inquiry in most cases, is not, whether the defendant has used the thoughts, conceptions, information, and discoveries promulgated by the original, but whether his composition may be considered a *new work*, requiring invention, learning, and judgment, or only a mere transcript of the whole or parts of the original, with mere colourable variations. *Stowe v. Thomas*, 9 Wall. C. Ct. (Amer) 547; S. C 2 Amer. L. Reg. 231. H

(5) Infringement in specific meaning.

- (a) Infringement is commonly taken to mean specific invasion of the author's rights rather than wholesale piracy; and the question of what is infringement or “literary larceny” is more often a question of the interpretation of the facts than the construction of the statute. Bowker's Copyright, p. 252. I
- (b) Infringement is a question of fact rather than of intent. (*Ibid*). J
- (c) It is not a valid defence that the infringer is ignorant; nor, on the other hand, can any one be held for intention to infringe, where the act of infringement has not been accomplished. (*Ibid.*), p. 253. K
- (d) The letter of the law is in general that the infringer must be held responsible and must make good any damages suffered by the copyright proprietor, but proof that he had no guilty knowledge or intent may effect mitigation of punitive damages. (*Ibid*). L

(6) Principle of infringement.

- (a) “Copying is not confined to literal repetition,” said Judge Clifford, in *Lawrence v. Dana*, in the United States Circuit Court in 1869, “but includes also the various modes in which the matter of any publication may be adopted, imitated, or transferred, with more or less colorable alterations to disguise the source from which the material was derived; nor is it necessary that the whole, or even the larger portion of the work, should be taken in order to constitute an invasion of copyright.” Bowker's Copyright, p. 254. M
- (b) The Chancery Division, through Lord Chief Justice Alverstone, took the extreme course in *Trenhouse v. “Sol” Syndicate*, in 1901, of holding a work an infringement, though less than a page was taken from the plaintiff's football guide. (*Ibid*). N

1.—“*Liability for infringement of copyright*”—(Continued).

I.—INFRINGEMENT OF COPYRIGHT—(Continued).

(7) **Infringement of copyright—Scope of Act XX of 1847.**

(a) By Act XX of 1847, the authors or publishers of books or of articles in periodicals are entitled to the copyright, or exclusive privilege of printing and multiplying copies thereof, during limited periods, and the invasion of such a right may be restrained by injunction, and damages may be also awarded. *Collett on Torts.* O

(b) This is a right existing only by express enactment, and not by common law. (*Ibid.*) P

(8) **Infringement by indirect copying.**

(a) Infringement may be by indirect as well as by direct copying. *Bowker's Copyright*, p. 254. Q

(b) In the case of *Cate v. Devon* in 1889, in the Chancery Court, the defence that the copying was not from the original copyright work but from a newspaper re-print, was rejected. Infringement may be through quite a different medium from the original; thus a shorthand re-production of a lecture on “The dog as the friend of man,” published in a text-book of shorthand, was held in the Chancery case of *Nichols v. Pitman* in 1884, to be an infringement of the lecture as much as if in ordinary type. (*Ibid.*) R

(c) Copying a material portion of a book, rendering it thereby unnecessary to a great extent for any one to refer to the original, is a breach of copyright and will be restrained, though the defendant does not sell his book, and only distributes it for use among his own servants and officers. *Collett on Torts.* S

(9) **Plagiarism not necessarily an invasion of copyright.**

Plagiarism does not necessarily amount to an invasion of copyright, and the author of a published book has no monopoly in the theories and speculations, or even in the results of observations therein contained; but no one, whether with or without acknowledgment, can be permitted to take a material and substantial portion of the published work of another author, for the purpose of making or improving a rival publication. *Pike v. Nicholas*, (1869), 38 L. J. (Ch.) 529; 20 L. T. (N.S.) 906; reversed (1870), L.R. 5 Ch. 251; 18 W.R. 321; 39 L. J. (Ch.) 435, but not in opposition to the principle above laid down. T

(10) **“Fair use,” Quotation beyond.**

(a) The general principles as to quotation beyond “fair use” were well laid down by Lord Chancellor Eldon, in the yearly English case of *Masman v. Tegg*, in 1826: “If the parts which have been copied cannot be separated from those which are original, without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing. If a man mixes what belongs to him with what belongs to me, and the mixture be forbidden by law, he must again separate them, and he must bear all the mischief and loss which the separation may occasion. If an individual chooses in any work to mix my literary matter with his own, he must be restrained from

I.—“Liability for infringement of copyright” —(Continued).

I.—INFRINGEMENT OF COPYRIGHT—(Concluded).

publishing the literary matter which belongs to me ; and if the parts of the work cannot be separated, and if by that means the injunction, which restrained the publication of my literary matter, prevents also the publication of his own literary matter, he has only himself to blame.” Bowker's Copyright, pp. 256, 257. **U**

(b) That bodily transfer of citations is beyond “fair use” was emphasized by Judge Ray in *White v. Bender* in 1911 (*Ibid*). **Y**

(c) In all cases of alleged infringement the question whether there is a likelihood of competition between the infringing work and the work infringed is an important factor in deciding whether a fair use has been made of the latter or not. *Weatherby and Sons International Horse Agency and Exchange Ltd.*, (1910), 2 Ch. 297 (305), Parker, J. **W**

(d) Knowledge is essential to the offence. See the Law of Copyright by Robertson. **X**

(11) Copyright—Infringement—Catalogue illustrations in—Copyright in portion of publication how far protected—Fraud on the public—Mis-statements—“Puffing” statements.

(a) The fact that the copyright in some of the illustrations in the plaintiff's catalogue is vested in other persons does not preclude him from suing to restrain an infringement of such of the illustrations as he has the copyright in. [*Lamb v. Evans*, (1892), 3 Ch. 462, *F.*]. 35 C. 463 = 12 C.W.N. 753. **Y**

(b) The objection that the catalogue contained certain statements which were not strictly accurate—no case of fraud on the public having been made in the written statement—was held to be no answer to an action to prevent infringement of the copyright, such statements being taken to be in the nature of “puffing” statements. (*Macfarlane and Co. v. Oak Foundry Co.*, (1883), 10 C² of S. Cas. (Sc) 801, *R.*) (*Ibid*). **Z**

(c) It was not sufficient for a defendant merely to give an undertaking not to publish in future illustrations which he admits to be infringements of copyrights. He ought, on the commencement of the suit, to have offered to consent to an injunction with regard to those illustrations. (*Ibid*). **A**

II.—INFRINGEMENT OF COPYRIGHT—EVIDENCE.

(1) No original matter—Strongest evidence of piracy necessary.

Where there is no original matter in the work, the strongest evidence of servile limitation and piracy must be afforded before an action for an infringement of copyright can be successful. 1 Hyde 9. **B**

(2) Proof from common errors.

In *Bissel v. Welsh*, *Re* Brightly Pennsylvania reports, in 1904, the United States Circuit Court held that repetitions of errors in citations were evidence of infringement by the author of his own reports published under an earlier contract by the plaintiffs ; and in 1911, in *Shepard v. Taylor*, Judge Hazel held that common errors were *prima facie* proof of infringement. Bowker's Copyright, pp. 257, 258. **C**

1.—“*Liability for infringement of copyright*”—(Continued).

III.—MODES IN WHICH COPYRIGHT MAY BE INFRINGED.

Copyright may be invaded in several ways :—

- (A) BY REPRINTING THE WHOLE WORK VERBATIM.
- (B) BY REPRINTING VERBATIM A PART OF IT.
- (C) BY IMITATING THE WHOLE OR A PART, OR BY REPRODUCING THE WHOLE OR A PART WITH COLOURABLE ALTERATIONS.
- (D) BY REPRODUCING THE WHOLE OR A PART UNDER AN ABRIDGED FORM.
- (E) BY REPRODUCING THE WHOLE OR A PART UNDER THE FORM OF A TRANSLATION.

See Copinger's Law of Copyright, 4th Ed., p. 155.

D

A.—By re-printing the whole *verbatim*.

(1) Such piracy seldom committed.

Piracies of the nature of this division are seldom committed, on account of the ease with which they could be detected and punished. Copinger's Law of Copyright, 4th Ed., p. 155.

E

(2) Mistaken right of defendant—Importation from abroad.

When such cases do arise generally either the defendant has mistaken his rights or the infringement has been imported from abroad.

N.B.—This was done in the case of a book imported from America, ‘Clarke's House of Lords Cases,’ Vol. viii ; See *Butterworth v. Kelly*, (1888), 4 T. L. R. 430.

F

B.—By re-printing *verbatim* a part.

(1) Nature of such piracy—Criterion—Quantity of matter subtracted.

Piracies of the nature of this division are far more frequent and more difficult of detection. The quantity of matter subtracted cannot in all cases be a true criterion of the extent of the piracy, for a work may be a piracy upon another, though the passages copied are stated to be quotations, and are not so extensive as to render the piratical work a substitution for the original work. Copinger's Law of Copyright, 4th Ed., p. 155.

G

(2) Extent of appropriation.

(a) In questions as to the—which is necessary to establish an infringement, extreme difficulty is usually experienced, for the quality of the piracy is frequently more important than the proportion which the borrowed passages might bear to the whole work. See *Tinsley v. Lacy*, (1861), 1 H. and M. 747.

H

(b) If so much is taken that the value of the original is sensibly diminished or the labours of the original author are substantially, to an injurious extent, appropriated by another that is sufficient in point of law, to constitute a piracy *pro tanto*. The entirety of the copyright is the property of the author ; and it is no defence that another person has appropriated a part and not the whole of such property. Copinger's Law of Copyright, 4th Ed., p. 156.

I

(3) Usual defences two.

There are two usual defences in this class of cases :—(1) that the defendant has not exceeded the limit of “fair quotation” and (2) that what the defendant is alleged to have taken is from a source open to all the world. (Copinger's Law of Copyright, 4th Ed., p. 156.)

J

I.—“*Liability for infringement of copyright*”—(Continued).

III.—MODES IN WHICH COPYRIGHT MAY BE INFRINGED—(Continued).

B.—By re-printing *verbiatim* a part—(Continued).

1. FAIR QUOTATION.

(a) *Quantity but slight test.*

(i) Whether the limits of fair quotation have been exceeded or not can seldom be determined simply by looking to the quantity taken (*Ibid.*). **K**

(ii) Lord Cottenham, in the cases of *Bramwell v. Halcomb*, (1836), 3 My. & Cr. 737, and *Saunders v. Smith*, (1838), 3 My. & Cr. 711, adverting to this point, said: “When it comes to a question of quantity, it must be very vague. One writer might take all the vital part of another’s book, though it might be but a small proportion of the book in quantity. It is not only quantity, but value, that is always looked to. It is useless to refer to any particular cases as to quantity.” In short, the Court must often, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects of the original work. Many mixed ingredients enter into the discussion of such questions. In some cases a considerable portion of the materials of the original work may be fused into another work, so as to be indistinguishable in the mass of the latter, which has other professed and obvious objects, and cannot fairly be treated as a piracy; or they may be inserted as a sort of distinct and mosaic work into the general texture of the second work, and constitute the peculiar excellence thereof, and then it may be a clear piracy. If a person should, under colour of publishing ‘elegant extracts’ of poetry, include all the best pieces at large of a favourite poet, whose volume was secured by copyright, it would be difficult to say why it was not an invasion of that right, since it might constitute the entire value of the volume. **L**

(iii) The case of *Mawman v. Tegg*, (1826), 2 Russ. 385; 26 R.R.-112 is to this purpose. There was no pretence in that case that all the articles of the encyclopædia of the plaintiffs had been copied into that of the defendants; but large portions of the materials of the plaintiff’s work had been copied. Lord Eldon, upon that occasion, held that there might be a piracy of a part of a work, which would entitle the plaintiffs to a full remedy and relief in equity. In prior cases he had affirmed the like doctrine. **M**

(iv) In *Wilkins v. Aikin* (1810), 17 Ves. 422, he said, “There is no doubt that a man cannot, under the pretence of quotation, publish either the whole or a part of another’s book, although he may use, what in all cases it is difficult to define, fair quotation.” **N**

(v) Whether the limits of lawful quotation have been exceeded is a question to be governed by the particular circumstances of each case. Copinger’s Law of Copyright, 4th Ed. p. 159. **O**

(vi) The defence of ‘fair quotation’ may be pleaded where the copyist has taken original copyright matter from a previous work. (*Ibid.*), p. 165.

(b) *Character of works to be regarded.* **P**

The character of the books may be looked at; for an author will be allowed greater freedom of quotation if he is writing a book of an entirely

1.—“*Liability for infringement of copyright*”—(Continued).

III.—MODES IN WHICH COPYRIGHT MAY BE INFRINGED—(Continued).

B.—By re-printing *verbatim* a part—(Continued).

different character from that from which he quotes, than if the books directly compete with one another. See *Bradbury v. Hotten*, (1872), L.R. 8 Ex. 1. But see *Leslie v. Young*, (1894), A. C. 835. Q

2.—COMMON SOURCE.

(a) *Source open to all the world.*

The second common defence above alluded to is raised where the previous writer has embodied in his work information which is matter of common knowledge or common observation, and which cannot well be put in different language, or selections from non-copyright sources. See *Copinger*, 4th Ed., p. 165. R

(b) *Defence raised in cases of compilation.*

This defence is chiefly raised in cases of compilation. All definitions of the same thing must be nearly the same, and descriptions, which are definitions of a more lax and fanciful kind, must always have in some degree that resemblance to each other which they all have to their object. Consequently in compiling such works as dictionaries, gazeteers, grammars, maps, arithmetics, almanacs, concordances, encyclopædias, itineraries, guide books, and similar productions, the materials to a considerable extent, must be nearly identical, and the prior compiler cannot monopolise what did not originate with himself, nor a subsequent compiler employ a prior arrangement and materials to such an extent as to be a substantial invasion of the anterior compilation. (*Ibid*). S

(c) *How far prior literature may be used.*

(i) The question as to how far advantage may be reaped from the work of another, and what use may be legitimately made of it, is difficult of solution. (*Ibid*), p. 167. T

(ii) Perhaps the strongest case in favour of the adoption by a subsequent compiler of the work of a preceding one, is that of *Cary v. Kearsely* (1802) 4 Esp. 168; where Lord Ellenborough thought that the former might fairly adopt part of the work of the latter, and might so make use of his labours for the promotions of science and the benefit of the public; but having done so, he was of opinion that the question would be, was the matter so taken used fairly with that view, and without what he might term the *animus furandi*? For while he considered himself bound to secure every man in the enjoyment of his copyright, he was fearful of putting manacles upon science. (*Ibid*). U

(d) *Compiling for various objects.*

It will be seen from what has been already said that there is nothing to prevent a person from copying common materials from an existing compilation and arranging and combining them in a new form, or using them for a different purpose.

The first compiler had no copyright in the common materials, but only in his own arrangement of those materials, and if this be not infringed, though the subsequent compiler may have considerably profited by its compilation, yet there would be no remedy. There would be a difference, however, if the first compiler had so worked upon the common materials, whether by translation, paraphrase, or abridgment, as to

I.—“*Liability for infringement of copyright*” (Continued).

III.—MODES IN WHICH COPYRIGHT MAY BE INFRINGED—(Continued).

B.—By re-printing *verbatim* part—(Concluded).

have practically elaborated a new work. Thus would he have placed the stamp of authorship upon the same, and have acquired a title thereto accordingly. (*Ibid.*), 190. Y

(e) *Copying general arrangement.*

Where the arrangement or general plan has been copied, there may or may not be an infringement of the rights of the first compiler. The principle would seem to be this: that where the arrangement or general plan only is copied, the materials used being different, there is no infringement. (*Ibid.*). W

(f) *A compiler must produce an original result.*

(i) The compiler of a work in which absolute originality is of necessity excluded, is entitled, without exposing himself to a charge of piracy, to make use of preceding works upon the subject, where he bestows such mental labour upon what he has taken, and subjects it to such revision and correction as to produce an original result, provided that he does not deny the use made of such preceding works, and the alterations are not merely colourable *Spiers v. Brown*, (1856), 6 W. R. 352. X

(ii) So in the case of a descriptive catalogue of fruit and trees, the Court was of opinion that the later compiler might use the work of his predecessor as a guide or instructor; but might not copy the descriptions from it, although he should verify and correct them from specimens of fruit before him. Though he could not be prevented from getting much aid in the way of information, suggestions, &c., from the protected work open before him, he must write his own descriptions from actual specimens, or common sources of information. *Hogg v. Scott*, (1874), L.R. 18 Eq. 444. Y

(iii) To further illustrate the principle, take the case of a dictionary. There may be a certain degree of skill exhibited as to order and arrangement, and there may be a good deal of ingenuity exhibited in the selection of phrases and illustrations, which are the best exponents of the sense in which the word is to be used: and there may also be great labour in the logical deduction and arrangement of the word in its different senses, when the sense of the word departs from its primary signification; but there cannot be copyright in much of the information contained in the numerous dictionaries published, each necessarily having a large number of words identically similar.

The great point to decide in such cases is whether in the particular case the work is a legitimate use of the plaintiff's publication in the fair exercise of a mental operation deserving the character of an original work. See *Wilkins v. Aikin*, (1810), 17 Ves. 422. Z

C.—By imitation the whole or part by re-production with colourable alterations.

(1) *Copyright infringed by imitation.*

Copyright may be infringed by imitating the whole or a part, or by re-producing the whole or a part with colourable alterations. *Copinger's Law of Copyright*, 4th Ed., 174. A

1.—“*Liability for infringement of copyright*”—(Continued).

III.—MODES IN WHICH COPYRIGHT MAY BE INFRINGED—(Continued).

C.—By imitation the whole or part by re-production with colourable alterations—(Concluded).

(2) Copy and imitation, distinction between.

(a) A copy is one thing, an imitation or resemblance another. (*Ibid.*), p. 175. B

(b) It is indeed certain, that whoever attempts any common topic will find unexpected coincidences of his thoughts with those of other writers; nor can the nicest judgment always distinguish accidental similitude from artful imitation. (*Ibid.*). C

(c) “There is likewise,” says Dr. Johnson, “a common stock of images, a settled mode of arrangement, and a beaten track of transition, which all authors suppose themselves at liberty to use, and which produce the resemblance generally observable among contemporaries. So that in books which best deserve the name of originals there is little new beyond the disposition of materials, already provided; the same ideas and combinations of ideas have been long in possession of other hands; and by restoring to every man his own, as the Romans must have returned to their cots from the possession of the world, so the most inventive and fertile genius would reduce his folios to a few pages. Yet the author who imitates his predecessor only by furnishing himself with thoughts and elegancies out of the same general magazine of literature, can with little more propriety be reproached as a plagiarist, than the architect can be censured as a mean copier of Angelo or Wren because he digs his marble from the same quarry, squares his stones by the same art, and unites them to columns of the same order” (*Ibid.*). D

(3) One test—Substantial identity.

The most general test is that of substantial identity. Is the similarity between the two works such as to make the one substantially identical with the other? Has the second author produced what is substantially an independent work, or has he appropriated merely the fruits of another's labour? *Wilkins v. Aldin*, (1810). 17 Ves. 422. E

N.B.—Each case must depend on its own peculiar circumstances..

(4) Not every imitation a proof of plagiarism.

“As not every instance of similitude” observes Dr. Johnson, “can be considered as a proof of imitation, so not every imitation ought to be stigmatized as plagiarism. The adoption of a noble sentiment, or the insertion of a borrowed ornament, may sometimes display so much judgment as will almost compensate for invention; and an inferior genius may, without any imputation of servility, pursue the path of the ancients, provided he declines to tread in their footsteps.”
Copinger's Law of Copyright, 4th Ed., p. 178. F

D.—By re-production under an abridged form.

(1) Infringement by abridgment.

(a) Copyright may be infringed by re-producing the whole or a part under an abridged form. (*Ibid.*). G

I.—“ Liability for infringement of copyright ”—(Continued).**III.—MODES IN WHICH COPYRIGHT MAY BE INFRINGED—(Continued).****D.—By re-production under an abridged form—(Concluded).**

- (b) A fair abridgment, when the understanding is employed in retrenching unnecessary circumstances, is not a piracy of the original work. Such an abridgment is allowable, and is regarded in the light of a new work (*Ibid*). H
- (c) To constitute a proper abridgment, the arrangement of the book abridged must be preserved, the ideas must also be taken, and expressed in language not copied but condensed. To copy certain passages and omit others, so as to reduce the volume in bulk, is not such an abridging as the Court would recognize as sufficiently original to protect the author. The judgment of the abridger must be called into play in condensing the views of the author (*Ibid*), p. 179. I
- (d) But abridgments are not favoured, and whether an abridgment is a piracy or not, depends not only upon the quantity but the value of the matter extracted; and if the result is, in effect, to substitute the one work for the other, it is a piracy; the point where a damage and consequent injury may be perceived, varies in each case, and cannot be definitely stated. Collet on Torts. J

(2) Abridgment and a compilation.

There is a clear distinction between an—

As the American Judge Leavitt, well observed in *Story's Executors v. Holcombe*, 4 McLean (Amer) 314. ‘‘ A compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of the author. The former cannot be extended so as to convey the same knowledge as the original work; the latter contains an epitome of the work abridged, and consequently conveys substantially the same knowledge. The former cannot adopt the arrangements of the works cited, the latter must adopt the arrangement of the work abridged. The former infringes the copyright, if matter transcribed, when published, shall impair the value of the original book; a fair abridgment though it may injure the original is lawful.’’ Copinger's Law of Copyright, 4th Ed., pp. 179, 180. K

E.—By translation.**(1) Copyright infringed by translation.**

Copyright may be infringed by re-producing the whole or part under the form of a translation. Translations are protected in England and an unauthorized copy of a translation, though the original be not entitled to copyright here, but is open to any number of persons to translate, is a piracy. (*Ibid*), p. 187. L

(2) Translations of protected work a piracy.

- (a) It is clear that an unauthorized translation of a protected work is a violation of the copyright therein, for a translation cannot be made without appropriating the entire substance of the protected composition. (*Ibid*). M
- (b) It has been argued that the translator by his own labour and skill re-produces in a new and useful form what is practically a new work, and

1.—“*Liability for infringement of copyright*”—(Continued).

III.—MODES IN WHICH COPYRIGHT MAY BE INFRINGED.—(Concluded).

E.—By translation—(Concluded).

that having exercised independent labour in its production he is entitled to publish. (*Ibid.*) N

(c) But the same reasoning would lead to the conclusion that a person might re-publish any protected work, if he did so with notes which required the exercise of independent labour. (*Ibid.*) O

(d) A translation of an unprotected work is certainly a work deserving of copyright, and in respect of which copyright may be obtained, but the allowing of a translation to be issued of a protected work without the consent of the author is a very different thing. (*Ibid.*) P

(3) Principle on which this rests.

The principle on which the position rests, that an unauthorized translation of a protected work is piratical, is that the property of the author consists not in the language alone; but in the matter of which the language is but the expression and means of communication. It is in the substance of the composition and not in the form only. And the matter is as much taken possession of by the translation into a different language, as it would be by a transcript of its language only. (*Ibid.*) Q

(4) Infringement of copyright—Translation.

The plaintiffs were London Publishers, and the defendant had translated certain English works, *e.g.*, Todhunter's Mensuration, Barnard Smith's Algebra, etc., into the Urdu language for the use of students, and sold and distributed copies of such translations in various parts of India. The plaintiffs alleged that they were the proprietors of the copyright, but Farran, J. held that a translation was not a copy and that the defendant by translating had not infringed the plaintiff's Copyright. 19 B. 557. R

See, also, 14 B. 586 (589); see however 15 P. R. 1893, noted under S. 5, *supra*.

N.B.—Note the difference between the English Law which considers translation to be an “original composition,” and the decision of the Bombay High Court in 19 B. 557 and 14 B. 586. S

IV.—EXCEPTIONS

(1) Exceptions from infringement.

(a) The doctrine of infringement cannot be invoked to obtain monopoly of any particular subject, and the authorized biographer of President Garfield was denied relief in 1889, in *Gilmore v. Anderson*, when he sought to prevent the publication of a life of Garfield by another writer. Bowker's Copyright, p. 255. T

(b) Nor will mere similarity of treatment of the same subject constitute infringement. (*Ibid.*) U

(2) Fair use.

(a) A copyright owner cannot prevent another person from publishing the matter contained in his book, if invented or collected independently or from making “fair use” of its contents. (*Ibid.*) Y

1.—“*Liability for infringement of copyright*”—(Concluded).

IV.—EXCEPTIONS - (Concluded).

(b) “As a question of strict law, apart from exceptional cases, the privilege of fair use accorded to a subsequent writer must be such, and such only, as will not cause substantial injury to the proprietor of the first publication; but cases frequently arise in which, though there is some injury, yet equity will not interpose by injunction to prevent the further use, as where the amount copied is small and of little value, if there is no proof of bad motive, or where there is a well-founded doubt as to the legal title, or where there has been long acquiescence in the infringement, or culpable laches and negligence in seeking redress,* especially if it appear that the delay has misled the respondent.” *Lawrence v. Dana*, 4 Cliff 1 (83). W

(c) In the case of a book the following ways of using the work have been decided to be fair :—

- (i) Using the information or the ideas contained in it without copying its words or imitating them so as to produce what is substantially a copy.
- (ii) Making extracts (even if they are not acknowledged as such) appearing under all the circumstances of the case, reasonable in quality, number and length, regard being had to the object with which the extracts are made and to the subjects to which they relate.
- (iii) Using one book on a given subject as a guide to authorities afterwards independently consulted by the author of another book on the same subject.
- (iv) Using one book on a given subject for the purpose of checking the results independently arrived at by the author of another book on the same subject. [See Digest of the Law of Copyright, by Sir James Stephen, Copyright Commission, 1878, p. lxx; cited in Oldfield's Law of Copyright, p. 57.] X

(3) Law digests.

In 1896, in *Mead v. West Pub. Co.*, concerning rival annotated editions of “Stephen on pleading,” then out of copyright, where the defendant's editor admitted having clipped the text from the complainant's edition and having obtained some ideas or suggestions from it, Judge Lochren, in the United States Circuit Court in Minnesota, held that there was no infringement because non-copyright matter could not be protected in a copyright work from such clipping, because the defendants' notes were original even though suggested from the other, and because the few errors and citations in common were immaterial since there were many new citations and the work was on the whole the result of original research. *Bowker's Copyright*, p. 257. Y

2.—“*Any person.*”

Any person—Company.

Any person includes company. *Marsills v. Gibbons*, (1874), L.R. 9 Ch. 518; *Mclean v. Moody*, 20 Sess. Cas. 1154. Z

3.—“Print...proprietor thereof.”

Translations—Copyright.

- (a) Translations are not copies, and the defendant by translating the books had not infringed the plaintiff's copyright. 19 B. 557. See however 15 P.R. 1893, noted under S. 5, *supra*, which is in accordance with the English rulings. A
- (b) A person who translates a book into another language is not thereby guilty of an infringement of copy-right. 14 B. 586. But see 15 P.R. 1893. B
- (c) S. 7 of Act XX of 1847, says :—“If any person shall print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copy-right.....shall be liable, etc., etc.” 14 B. 586, 589. C
- (d) The use of the words “print or cause to be printed” only, and the omission of the word “translate” appears very important, considering the doubts that the Act was intended to remove. (*Ibid*). D
- (e) No definition of the term “book” is given in the Act. (*Ibid*). E
- (f) The definition given in 5 and 6 Vic., c. 45, does not mention translation. (*Ibid*). F
- (g) It is apparent that a translation and a copy stand on different footings; on the former the skill and time and labour of another have been employed, and a book has been produced available for a different class or race of readers. There is not necessarily any competition between the two. Under English law it appears that a translation has been always considered to be an original composition. It was on this view of the Law that *Wyatt v. Barnard*, (3 V. & B., 77) was decided. (*Ibid.*); Cf. 15 P.R. 1893. G

4.—“Sult.”

(1) Almanac—Burden of proof—Injunction.

In a suit for injunction on the ground of infringement of plaintiff's copyright in an almanac published by him, it was found that the tables given in the parties' almanacs tallied, except as regards minutes and seconds that the calculations were admittedly worked out on what are known as *Makrand* and that there were other almanacs which resembled the defendants. Held that these findings were not sufficient to establish piracy on the part of the defendants. 95 P.L.R. 1910 = 8 Ind. Cas. 497. H

Held also, that the fact that in previous years the defendants obtained information for their almanacs from plaintiff on payment of money did not affect the case. The weakness of the defence does not make up for want of proof of the allegation of the plaintiff. (*Ibid*). I

(2) Infringement may be restrained by injunction.

See 13 B. 358. J

(3) Injunction.

- —must be applied for promptly and there must be no unnecessary delay. *Mawman v. Tegg*, (1826), 2 Russ. 355 (393). K

(4) Profits of infringement.

It is immaterial that the.....have been large or small. *Nicols v. Pitman*, (1884), 26 Ch. D. 374 (379). L

4.—“Sult ”—(Concluded).

(5) Part clearly infringed.

Where part of work is clearly infringed, an injunction will be granted by the Court without waiting till the whole amount infringed is ascertained.
Smith v. N.S.W. Ry. Co., 23 L.J. Ch. 562. M

(6) Infringement of copyright—Suit for injunction.

A suit for injunction to restrain a piracy of Copyright by the sale of a book, published more than a year before suit, is not barred by S. 26, cl. 45, 5 and 6, Vic. or by Art. 40, Sch. II of the Limitation Act, 1908, 17 C. 951. N

N. B.—Suits for compensation for infringing Copyright are governed by Art. 40, Limitation Act, 1908.

5.—“Local Court.”

(1) Copyright—What constitutes—Infringement of—Jurisdiction in cases of.

The plaintiff having translated into Bengali a book which had been anonymously published in English, published it as his own with a few corrections and additions, and registered such Bengali book as his under Act XX of 1847. The defendant published the same book *literatim et verbatim* under a different title. At the hearing defendant raised two issues, one as to the jurisdiction of the Small Cause Court to entertain such an action, and another as to whether or not plaintiff was entitled to the copyright of the work. The Judges of the Small Cause Court differing on the question of jurisdiction, the whole case was referred to the Supreme Court, when it was held—

1st—that by Act IX of 1850, which was passed after the Copyright Act, the Small Cause Court had power to try such suits where the damages claimed did not exceed 500 rupees; and

2nd—that the plaintiff had such a copyright in his book as entitled him to maintain the action. *Gasper* 182=2 I. D., O. S. 949. O

(2) Infringement of Copyright—Jurisdiction of Small Cause Court—Damages not to exceed Rs. 500.

(i) According to the literal reading of S. 7, the person infringing a copyright, if he offends within the local limits of the jurisdiction of any Court of Judicature established by Her Majesty's Charter, is rendered liable not to an action generally but to an action in such Court. 3 I. D., O. S. 762 (764). P

(ii) But the real meaning of the section is that if a person infringes a copyright he shall be subjected to an action for damages. (*Ibid*). Q

(iii) Such action, if the infringement takes place within the local limits of a Court of judicature established by Her Majesty's Charter, to be brought in such Court. (*Ibid*). R

(iv) From the time of passing the Copyright Act up to the time of the passing of Act IX of 1850, it is clear that an action for an infringement within the local limits of the Supreme Court of Judicature could have been brought only in such Court. (*Ibid*). S

(v) But by the Act IX of 1850, which was passed after the Copyright Act, the Small Cause Court has acquired jurisdiction in all suits for damages not exceeding Rs. 500, unless such suit falls within the proviso of S. 37. (*Ibid*). T

5.—“*Local Court.*”—(Continued).

(vi) The Small Cause Court has jurisdiction to try suits for damages not exceeding Rs. 500 for the infringement of a copyright. (*Ibid*). U

(3) Suit for infringement of copyright—Jurisdiction of Small Cause Court.

(a) The Copyright Act XX of 1847 had, in effect, provided in S. (7) that, “if any person infringed a copyright, the offender, if the offence was committed within the local limits of the jurisdiction of any of the Chartered High Courts, should be liable to any action in such Court; and that, if he offended in any other part of the British territories, he should be liable to a suit in the highest local Court exercising Original Civil Jurisdiction” 7 C.L.R. 471 (473) = 6 C. 499. Y

(b) “That being the law in 1847 the Presidency Small Cause Courts Act was passed in 1850, giving the Small Cause Court exclusive jurisdiction in all suits for damages up to a certain amount; and *Sir Barnes Peacock* and the other Judges held in *Gasper* 185 that by that Act the jurisdiction which had been given to the High Court by the Act of 1847 was transferred to the Small Cause Court in suits up to the prescribed amount for infringement of copyright.” (*Ibid*). W

(c) “By that decision, which appears to be quite correct, the Court is of course bound. And by a parity of reasoning the *Mofussil* Small Cause Courts, when they were established in 1865, obtained exclusive jurisdiction in the *mofussil* to try suits for damages for infringement of copyright up to a certain amount.” (*Ibid*). X

(d) “But since these Small Cause Court Acts were passed, S. 7 of Act XX of 1847 has been amended by Act XII of 1876, and that section now in effect runs thus:—

“If any person shall infringe any copyright, the offender shall be liable to a suit in the highest local Court exercising Original Civil Jurisdiction.” *Ibid*. X-1

(e) “As therefore, by the Act of 1865, the Legislature transferred the jurisdiction in cases for infringement of copyright up to certain amount from the District Court to the Small Cause Courts, so that Act of 1876 has re-transferred the jurisdiction in such suits back again to the District Court.” (*Ibid*). Y

(f) “This appears to be the plain meaning of the Legislature, and it is certainly founded on much good reason; for these suits for infringement of copyright involve questions of great difficulty, and should be tried by the Court most competent to deal with them.” (*Ibid*). Z

(g) “It appears to be that the section as altered must be regarded as a fresh enactment of the Legislature, and this being so, there can be doubt that the intention of the Legislature is that these cases arising in the *mofussil* should now be tried in the Court exercising the highest Original Civil Jurisdiction, which, in the present instance, is the Court of the District Judge” (*Ibid*). A

(h) So all suits in the *mofussil* for infringement of copyright must be brought in the Court of the Judge of the district. (*Ibid*). B

(4) Copyright, infringement of—S. 5 and 6 Vic. C. 45—Jurisdiction—Order for books sent from Bombay, to Delhi—Value payable post.

The plaintiffs were publishers in London. The defendant carried on a printing and publishing business at Delhi. Between the years 1869 and 1891, the defendant translated certain English works (e. g. *Todhunters's*

5.—“Local Court.”—(Concluded).

Mensuration, Barnard Smith's Algebra, etc.) into the Urdu language for the use of native students and sold and distributed copies of such translations in various parts of India. The plaintiffs alleged they were the proprietors of the copyright in the said books, and they sued in Bombay for a declaration of their ownership, and that the said books printed and sold by the defendant were an infringement of the said copyright and for an injunction, etc. In June, 1894, the plaintiffs' agent who was then in India, instructed the Bombay firm of Sunder Pandurang to send an order for copies of the translations published by the defendant. The firm accordingly wrote a letter to the defendant at Delhi requesting him to send the books to Bombay by value payable post, which the defendant did and he received the amount from the post office at Delhi. The defendant, pleaded (*inter alia*) that the High Court of Bombay had no jurisdiction, and he denied that he infringed the plaintiffs' copyright.

Held, that no part of the plaintiffs' cause of action arose in Bombay so as to give them a right to sue under cl. 12 of the Letters Patent. The act of Sunder Pandurang in paying for and receiving the goods formed no part of the defendant's offence, which was completed when he posted the books at Delhi. 19 B. 557. **C**

(5) Infringement at Lahore—Defendant a resident of Lahore—Demand for surrender at Aligarh.—Jurisdiction of the Court at Aligarh to entertain suit.

(a) A suit for infringement of copyright can be brought only in the Court within the local limits of whose jurisdiction the cause of action arises or the Court within whose limits the defendant resides. 7 A.L.J. 923 = 7 Ind. Cas. 101. **D**

(b) The defendant, a resident of Lahore, printed a book in which the plaintiff alleged he had a copyright. The plaintiff resided at Aligarh where he instituted a suit for damages. *Held* that the cause of action arose at Lahore and the Court at Aligarh had no jurisdiction to entertain the suit. (*Ibid*). **E**

8. * * * * * In any suit or action brought in any of

Notice to be given by defendant to plaintiff in suit for infringing Copyright.

the Courts of Judicature established by Her Majesty's Charter under the provisions of this Act against any person, for printing any such book for sale, hire or exportation, or for selling, publishing or exposing to sale¹ or hire, or causing to be sold, published or exposed to sale or hire, or for having in his possession for sale or hire, any such book so unlawfully printed, the defendant, on pleading thereto, shall give to the plaintiff a notice² in writing of any objections on which he means to rely on the trial of such action ;

and if the nature of his defence be that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim Copyright, or is not the proprietor of the

Copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the Copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the Copyright therein, together with the title of such book, and the time when and the place where such book was first published;

Particulars to be stated in notice when right of plaintiff is denied.

otherwise the defendant in such action shall not, at the trial or hearing of such action, be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such Copyright as aforesaid, or that he was not the proprietor of the Copyright therein, and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the Copyright therein than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time and place of publication, with the title, time and place specified in such notice.¹

Effect of omission.

(Notes).

(1) Legislative changes.

The words "And it is hereby enacted that after the passing of this Act" were repealed by the Repealing Act, 1874 (XVI of 1874). F

(2) Section—Source.

Cf. the Copyright Act, 1842 (5 & 6 Vict., c. 45), S. 16.

See the following English Cases:—*Hale v. Bradbury*, (1879) 12 Ch. D. 886; *Warne & Co. v. Seebohm*, (1888) 39 Ch. D. 73 (83); *Muddock v. Blackwood*, (1898) 1 Ch. 58. G

1.—"Exposing to sale."

Offer for sale—Expose for sale.

(a) A person who quotes an approximate price for a copyright work in the negotiations for sale does not "offer for sale." *Wolff v. Wood*, (1960), Times, Oct. 31, p. 5. H

(b) (i) Nor does he "expose for sale" if he canvasses for order and shows an infringing copy of a book. *Britain v. Kennedy*, (1902) 19 T.L.R. 122. I

(ii) Producing a sample work of sculpture and asking for orders in accordance with it is not an exposing for sale. (*Ibid*). J

2.—“ Notice.”

Registration of copyright—Proprietorship disputed—Notice—Act XX of 1847, S. 8—Practice—Procedure.

The plaintiffs had registered themselves as the proprietors of the Copyright in the books in question both in London and in India. The defendant had not given notice of his intention to dispute the plaintiffs' copyright as required by S. 8 of Act XX of 1847.

Held that the plaintiffs' copyright in the books had been established. 19 B. 557. **K**

9. * * * * * In any such suit or action as last aforesaid brought in any Zila Court or other local Court as aforesaid the defendant shall state in his answer all such matters as he means to rely on, and which by the last preceding section the defendant in any suit or action brought in any of the Courts of Judicature established by Her Majesty's Charter is required to give notice of in writing; otherwise such defendant shall be subject to the same consequences for any omission in his answer as a defendant is made subject to by the last preceding section for any omission in his notice.

Particulars to be stated in defendant's answer to suit.

Effect of omission.

(Note).

Legislative changes.

The words “ And it is hereby enacted that, after the passing of this Act ” were repealed by the Repealing Act, 1874 (XVI of 1874). **L**

10. * * * * * When any publisher or other person shall, within the said territories, before or at the time of the passing of this Act, but after the passing of the said Act of Parliament, 3 & 4 Wm. IV, 3 & 4 Wm. IV, cap. 85, have projected, conducted and carried on, or shall hereafter project, conduct or carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles or portions thereof, for publication in, or as part of, the same, and such work volumes, parts, essays, articles or portions shall have been, or shall hereafter be, composed under such employment, on the terms that Copyright therein shall belong to such proprietor, projector, publisher or conductor, and paid for by such proprietor, projector, publisher or conductor,

Copyright in encyclopædia, review, etc.

the Copyright in every such encyclopædia, review, magazine, periodical work and work published in a series of books or parts, and in every volume, part, essay, article and portion so composed and paid for, shall be the property of such proprietor, projector, publisher or conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of Copyright therein as is given to the authors of books by this Act, except only that in the case of essays, articles or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act :

Consent of author to publication singly. Provided always, that during the term of twenty-eight years the said proprietor, projector, publisher or conductor shall not publish any such essay, article or portion separately or singly without the consent previously obtained of the author thereof or his assigns :

Employé's right to publish separately. Provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or shall be so employed as aforesaid, to publish any such his composition in a separate form, who, by any contract, express or implied, may have reserved or may hereafter reserve to himself such right ; but every author reserving, retaining or having such right, shall be entitled to the Copyright in such composition when published in a separate form according to this Act, without prejudice to the right of such proprietor, projector, publisher or conductor as aforesaid.

(Note).

Legislative changes.

The words " And it is hereby enacted that " were repealed by the Repealing Act, 1874 (XVI of 1874). M

11. * * * * * The proprietor of the Copyright in any encyclopædia, review, magazine, periodical work or other work published in a series of books or parts shall be entitled to all the benefits of the registration in the office of the Secretary to the Government of India for the Home Department, under this Act, on entering in the said Book of Registry the title of such encyclopædia, review, periodical work or other work published in a series

Rights of proprietor of Copyright on making entry in registry.

of books or parts, the time of the first publication of the first volume, number or part thereof or of the first volume, number or part first published after the passing of this Act, in any such work which shall have been published heretofore, and after the passing of the said Act of Parliament, 3 & 4 Wm. IV, cap. 85, and the name and place of abode of the proprietor thereof and of the publisher thereof when such publisher shall not also be the proprietor thereof.

(Note).

Legislative changes.

The words "And it is hereby enacted that" were repealed by the Repealing Act, 1874 (XVI of 1874). N

12. * * * * * All copies of any book wherein there shall be Copyright ², and of which entry shall have been made in the said Registry Book, and which shall have been unlawfully printed without the consent of the registered proprietor ³ of such Copyright in writing under his hand first obtained shall be deemed to be the property of the proprietor of such Copyright and who shall be registered as such; and such registered proprietor shall, after demand thereof in writing ⁴, be entitled to sue for and recover the same or damages ⁵ for the detention thereof.

(Notes).

(1) Legislative changes.

The words "And it is hereby enacted, that" were repealed by the Repealing Act, 1874 (XVI of 1874). O

(2) Scope of section.

Semble—This section applies as much to the innocent possessor of a pirated copy, as to the printer and publisher in possession of a whole edition of pirated copies of a book and the same duty is cast upon both. 7 A.L.J. 923 = 7 Ind. Cas. 101. P

1.—"Proprietorship of copies of book illegally printed."

(1) Delivery by person in possession of pirated copies of book.

S. 12 of the India Copyright Act, 1847, does not require a person in possession of pirated copies of a book to deliver them to the proprietor of the copyright at any place selected by the latter. The place of residence of the person making the demand is besides the question. 7 A.L.J. 923 = 7 Ind. Cas. 101. Q

(2) Copies to be delivered.

The copies printed and published must be delivered up. *Mansell v. Valley Printing Co.* (1908) 1 Ch. 567. R

2.—“Book.....copyright.”

(1) Copyright in ‘selection’ of poems.

There is copyright in a ‘selection’ of poems. The true principle applicable to cases of this kind is, that one person is not at liberty to use or avail himself of the labour, which another has been at for the purpose of producing his work, that is, in fact, merely, to take away the result of another man’s labour, or in other words his property. 17 C. 951. S

(2) Successive issues of “selection” of poems, nature of.

In the absence of any reason to suppose the contrary it is reasonable to assume that successive issues of a book of the kind, known as “selection” of poems, under the same name, are substantially the same book. (*Ibid*). T

3.—“Registered proprietor.”

(1) Registry not showing assignment by author to publishers the proprietors of a book.

Where it was contended that the author of a book, in whom the copyright would *prima facie* be, being one person and the property being registered in the name of the publishers and proprietors of the book, the registry was bad because it did not show an assignment to them, *held*, that it was not necessary that the registry should show an assignment of the copyright by the author to the publishers. 17 C. 951. [D., 29 M. 292]. U

(3) Registration not containing individual names and addresses of the partners in the firm—Effect.

The Registration was not bad because it contained the firm and business address of the plaintiffs (the publishers and proprietors of the book), and not the individual names and addresses of the partners in the firm. 17 C. 951. V

4.—“After demand thereof in writing.”

ENGLISH LAW AND INDIAN LAW.

(i) ENGLISH LAW.

Under the Copyright Act of 1842, previous demand in writing was necessary. This no longer seems to be the case. See S. 7 of the English Copyright Act of 1911.

(ii) INDIAN LAW.

The registered proprietor is entitled to sue for and recover, after demand in writing. W

5.—“Proprietor.....damages.”

Ancient religious works annotated—Copyright—Infringement—Suit for injunction and damages—Act XX of 1847, S. 12.

In 1884, the plaintiff published a new and improved edition of an old religious Sanskrit work, called “*Vrtraja*” on religious observance. In this edition, the old materials had been completely re-cast and re-arranged and valuable footnotes also had been added with the assistance of Sanskrit Pundits. The copyright of this work was registered by the plaintiff in 1885. The defendants in 1886 brought out an edition of the same work and registered it. This edition contained the same alterations, omissions and additions, and the same footnotes as were

5.—“Proprietor...damages.”—(Concluded).

contained in the plaintiff's edition, except some immaterial changes. The plaintiff alleging that his copyright had been infringed, prayed that an injunction may be issued to the defendants restraining them from selling their unsold copies of their books and for damages.

Held, granting the injunction, that the defendants had not gone to original sources to get their material, but had simply appropriated the labour and industry of a previous compiler (plaintiff) with an existing copyright. The plaintiff's edition containing new arrangement of old matter will have a right to the protection afforded by the law of copyright. (*Ibid*).

Held also that the plaintiff was entitled to demand from the defendant an account of the net profits made by him by the sale of the plaintiff's books, although Ss. 12 and 13 of Act XX of 1847 provide that the plaintiff, in such a case, is only permitted to recover his books or damages for their detention since the results of the accounts will be to give to the plaintiff what he could have obtained as damages under the section. (*Ibid*).

X-Z

13. * * * * * If the case be within the jurisdiction of

Right of Copyright proprietor to sue for and recover copies or damages. 1

any of the Courts of Judicature established by Her Majesty's Charter, such registered proprietor shall be entitled to sue for and recover such copies or damages for the detention thereof, in an action of

detinue from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover; and, * * if the case be within the jurisdiction of any Zila Court or other local Court as aforesaid, the registered proprietor shall be entitled to sue for and recover such copies or damages for the detention or conversion thereof, in such form as is in use in the said Zila or other local Courts for the recovery of specific personal property or damages for the detention or conversion thereof.

(Notes).

Legislative changes.

The words “And it is hereby enacted that” at the beginning of the section were repealed by Act XVI of 1874.

The word “that” was repealed by the Repealing Act, 1876 (XII of 1876). **A**

1.—“Right of copyright....copies or damages.”

Damages.

(a)—may be recovered for infringement and it is not necessary to prove special damage. *Exchange Telegraph Co. v. Gregory Co.*, (1896) 1 Q. B. 417 (453). **B**

(b) While damage actually suffered need not be shown to obtain an injunction, the Court must be satisfied that damage is likely to result. *Tinsley v. Lacy*, (1813) 1 Hem. & M. 747. **C**

15. * * * * * No proprietor of Copyright in any book first published after the passing of the said Act of Parliament, 3 & 4 Wm. IV, c. 85, shall maintain, under the provisions of this Act, any action or suit at law or in equity, or any summary proceeding¹ in respect of any infringement of such Copyright, unless he shall before commencing such action, suit or proceeding, have caused an entry to be made in the Book of Registry² at the office of the said Secretary of such book, pursuant to this Act:

Entry in registry to be made before Copyright proprietor can proceed under Act.

³ Provided always that the omission to make such entry shall not affect the Copyright in any book, nor the right to sue or proceed in respect of the infringement thereof, except the right to sue or proceed in respect of the infringement thereof under the provisions of this Act.

Omission to make entry not to affect Copyright, etc.

(Notes).

Legislative changes.

The words "And it is hereby enacted that" were repealed by Act XVI of 1871. D-F

1.—"Summary proceeding."

Summary proceeding—Meaning.

The summary proceeding mentioned in S. 14 of Act XX of 1847 means the summary proceeding mentioned in S. 6 of the Act. 2 C.L.J. 511 = 10 C.W.N. 131 = 33 C. 571. G

2.—"Entry.....Book of Registry."

(1) Registration, only a condition precedent to the right to sue.

The title to copyright is complete before registration, which is only a condition precedent to the right to sue. Where the defendant published the book, before the registration of the copyright in the plaintiffs' name, *held*, that the right of action is not lost to the plaintiffs. (17 C. 951). H

(2) Copyright registered and subsisting—Piracy.

According to the law prevailing in England, there is no right to sue on account of piracy in the case of a book which has been published, except where the copyright has been registered and subsists under statutory provisions (*Copinger* on "Copyright" and *Macklin v. Richardson and Goubiard v. Wallace*, 7 Ruling cases, 66, 67, 70, 128, R.) 29 M. 292. I

3.—"Provided.....in this Act."

(1) Proviso—Effect—Published works.

(a) The proviso to S. 14 of Act XX of 1847 does not, in substance, differ from the proviso in the English Act. (5 & 6 Vict., c. 45, S. 24). (*Ibid*). J

3.—“Provided.....In this Act”—(Concluded).

(b) The effect of it is to protect copyright in unpublished works as also copyrights where there is registry under the statute in the case of published works inclusive of cases in which there has been registry before the suit, though after the infringement complained of. (*Ibid*). **K**

(c) So, there is no protection of copyright in published works in India, unless it is registered under Act XX of 1847 or Act XXV of 1867. (17 C. 951, D.) (*Ibid*). **L**

(d) Where the author of an almanac applies for registration under the Act of 1867 but the Registrar refuses to register on the ground that the almanac is exempted from registration by a notification by the Government of India, this is not equivalent to registration. (*Ibid*). **M**

(2) Proprietor's name not registered at the time of proceeding.

(a) A proprietor of the Copyright of books, whose name has not been entered in the Book of Registry at the Office of the Secretary of the Home Department of India at the time the proceeding is commenced, is precluded by S. 14 of the Act from maintaining an application to have the name of a person expunged from the Catalogue of Books at Bombay, the proceeding being one in respect of an infringement. 2 C.L.J. 511 = 10 C.W.N. 134 = 33 C. 571. **N**

(b) The proviso to that section, namely, “that the omission to make such entry shall not affect the Copyright in any book except the right to sue or proceed in respect of the infringement thereof under the provisions of ‘his Act,’” gives support to that view. (*Ibid*). **O**

16. * * * * * If any action or suit shall be com-

Plea by defendant and special evidence in actions for things done under Act. Defendant to have full costs if successful.

menced or brought in any of the Courts of Judicature established by Her Majesty's Charter against any person or persons whomsoever, for doing or causing to be done anything in pursuance of this Act, the defendant or defendants in such action

may plead the general issue and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant or the plaintiff shall become non-suited or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath in the said last-mentioned Courts.

(Notes).

Legislative changes.

Certain formal words, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted. **P**

16. * * * * * All * * * * * indictments, inform-

Limitation of criminal proceedings for breach of Act.

ations and other criminal proceedings for any offence which shall be committed against this Act shall be brought, sued and commenced within twelve calendar months next after such offence

committed, or else the same shall be void and of none effect.

(Notes).**Legislative changes.**

Certain formal words, repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

The words "actions, suits, bills," after "All" were repealed by Sch. I of the Indian Limitation Act, 1871 (IX of 1871). 9

17. [Saving of pre-existing rights.] Repealed by Act XIV of 1870.

SCHEDULE.**No. 1.*****Original Entry of Proprietorship of Copyright of a Book.***

Time of making the Entry.	Title of Book.	Name of the Publisher and Place of Publication.	Name and Place of abode of the Proprietor of the Copyright.	Date of first Publication.

No. 2.***Form of Entry of Assignment of Copyright in any Book previously registered.***

Date of Entry.	Title of Book.	Assignor of the Copyright.	Assignee of the Copyright.
	(Set out the title of the book and refer to the page of the Registry Book in which the original entry of the Copyright thereof is made.)		

APPENDIX.

BRITISH COPYRIGHT ACT, 1911.

(1 AND 2 GEORGE V., CHAPTER 46).

CONTENTS.

PART I.—IMPERIAL COPYRIGHT.

Rights.

1. Copyright.
2. Infringement of Copyright.
3. Term of Copyright
4. Compulsory licenses.
5. Ownership of Copyright, &c.

Civil Remedies.

6. Civil remedies for infringement of Copyright.
7. Rights of owner against persons possessing or dealing with infringing copies, &c.
8. Exemption of innocent infringer from liability to pay damages, &c.
9. Restriction on remedies in the case of architecture.
10. Limitation of actions.

Summary remedies.

11. Penalties for dealing with infringing copies, &c.
12. Appeals to quarter sessions.
13. Extent of provisions as to summary remedies.

Importation of Copies.

14. Importation of copies.

Delivery of Books to Libraries.

15. Delivery of copies to British Museum and other libraries.

Special Provisions as to certain Works.

16. Works of joint authors.
17. Posthumous works.
18. Provisions as to Government Publications.
19. Provisions as to mechanical instruments.

20. Provision as to political speeches.
21. Provisions as to photographs.
22. Provisions as to designs registrable under 7 Edw. 7, c. 29.
23. Works of foreign authors first published in parts of His Majesty's dominions to which Act extends.
24. Existing works.

Application to British Possessions.

25. Application of Act to British Dominions.
26. Legislative powers of self governing dominions.
27. Power of Legislatures of British possessions to pass supplemental legislation.
28. Application to protectorates.

PART II.—INTERNATIONAL COPYRIGHT.

29. Power to extend Act to foreign works.
30. Application of Part II to British possessions.

PART III.—SUPPLEMENTAL PROVISIONS.

31. Abrogation of common law rights.
32. Provisions as to Orders in Council.
33. Saving of university copyright.
34. Saving of compensation to certain libraries.
35. Interpretation.
36. Repeal.
37. Short title and commencement.

SCHEDULES.

First Schedule.—Existing rights.

Second Schedule.—Enactments repealed.

THE COPYRIGHT ACT, 1911¹.

(1 AND 2 GEORGE V., CHAPTER 46).

An Act to amend and consolidate the Law relating to Copyright.
(16th December, 1911).

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

(Notes).

1.—“The Copyright Act, 1911.”

(1) The New Copyright Law—Copyright Act, 1911.

This new code is propounded by Mr. Sydney Buxton, as President of the Board of Trade. *The Law Journal.* A

(2) Commencement of Act.

The Act came into operation on the 1st of July, 1912. B

(3) Changes in substantive law of copyright.

The changes in the substantive law of copyright are many and far-reaching—

(i) A uniform term of life and fifty years has been established for all species of copyright instead of the varying terms hitherto prevailing ;

(ii) Performing right is merged in the author's copyright ;

(iii) Architectural works for the first time receive the same protection as other works of art ;

(iv) Wordless plays, ballets, cinematographs, and musical records have become subjects of copyright. *The Law Journal.*

(v) The right begins to run from the making of any work, so that it will extend also to work unpublished. (*Ibid*).

(vi) Authors, or rather their legal personal representatives, get the benefit of a 'double term,' the second half of the 50 years' term after death being unassignable except by will.

(vii) And *per contra* the system of 'compulsory license' is introduced by the provision that during the last twenty-five years any person may reproduce a work without consent, on payment of a small fixed royalty. (*Ibid*).

(viii) Some longstanding grievances and anomalies are, at the same time, removed—the author of a novel will, in future, have the exclusive right of dramatising and translating it, and, conversely, the writer of a play will have the right of novelising it. (*Ibid*).

(ix) Works of art are no longer capable of reproduction (without consent of the proprietor) as *tableaux vivants* or 'living pictures.'

(x) The composer of a musical composition will have the right¹ (subject to some exceptional privileges given to makers of gramophones) of adopting his composition for use upon mechanical instruments. (*Ibid*).

(xi) New anomalies and difficulties are, indeed, introduced, as in the case of these same *privilegia* for traders in musical records, the provisions as to joint-authorships and commissioned works, and the more serious powers of exclusive and separate legislation given to the self-governing Dominions. (*Ibid*). G-H

(4) Points commending the Act.

But what will certainly commend the Act, generally, is its abolition of the futile system of registration, which has hitherto been such a pitfall in the way of aggrieved owners of copyright, the simplification and extension of the remedies for infringement, and, above all, the grant of all these new rights and advantages to the present proprietors of copyright, with the free grant to the original authors of the extended term unaffected by any existing assignments. (*Ibid*). I

(5) Conclusion.

These are great boons, for which we are indebted largely to the work of Sir John Simon, who stood sponsor with Mr. Buxton for the Act. (*Ibid*). J

PART I.

IMPERIAL COPYRIGHT.

Rights.

1. (1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary dramatic musical and artistic work, if—

(a) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid ; and

(b) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid ;

but in no other works, except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries.

(2) For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public ; if the work

is unpublished, to publish the work or any substantial part thereof, and shall include the sole right:—

- (a) to produce, re-produce, perform, or publish any translation of the work ;
- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work ;
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise ;
- (d) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered,

and to authorize any such acts as aforesaid.

(3) For the purposes of this Act, publication, in relation to any work, means the issue of copies of the work to the public and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works.

2. (1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright :
 Provided that the following acts shall not constitute an infringement of copyright :

- (i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary ;
- (ii) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work ;
- (iii) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings, or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art.

- (iv) The publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists: Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged;
- (v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except, whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries;
- (vi) The reading or recitation in public by one person of any reasonable extract from any published work.

(2) Copyright in a work shall also be deemed to be infringed by any person who—

- (a) sells or lets for hire, or by way of trade exposes or offers for sale or hire; or
- (b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or
- (c) by way of trade exhibits in public; or
- (d) imports for sale or hire into any part of His Majesty's dominions to which this Act extends,

any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the part of His Majesty's dominions in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation took place.

(3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

3. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death:

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act

thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the re-production of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work; and, for the purposes of this proviso, the Board of Trade may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

Compulsory licences. 4. If at any time after the death of the author of a literary, dramatic or musical work which has been published or performed in public a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to re-publish or to allow the re-publication of the work or has refused to allow the performance in public of the work, and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a license to re-produce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Judicial Committee may think fit.

Ownership of copyright, &c. 5. (1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein :

Provided that—

- (a) Where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary the person by whom such plate or other original was ordered shall be the first owner of the copyright; and
- (b) where the author was in the employment of some other person under a contract of service or apprenticeship, and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to

be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine or similar periodical.

(2) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations to the United Kingdom or any self-governing dominion or other part of His Majesty's dominions to which this Act extends, and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by license, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorized agent :

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a license to publish a work or part of a work as part of a collective work.

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee as respects the right so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

Civil Remedies.

6. (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise as are or may be conferred by law for the infringement of a right.

Civil Remedies for infringement of copyright.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court.

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case

may be, the title of the plaintiff, and where any such question is in issue, then--

- (a) If a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work ;
- (b) If no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

Rights of owner against persons possessing or dealing with infringing copies, &c

7. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

Exemption of innocent infringer from liability to pay damages, &c.

8. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for suspecting that copyright subsisted in the work.

Restriction on remedies in the case of architecture.

9. (1) Where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction or interdict to restrain the construction of such building or structure or to order its demolition.

(2) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright, or as impose summary penalties, shall not apply in any case to which this section applies.

Limitation of actions.

10. An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement.

Summary Remedies.

Penalties for
dealing with in-
fringing copies, &c.

- 11—(1) If any person knowingly—
(a) makes for sale or hire any infringing copy of
a work in which copyright subsists ; or
(b) sells or lets for hire, or by way of trade exposes or offers for
sale or hire any infringing copy of any such work ; or
(c) distributes infringing copies of any such work either for the
purposes of trade or to such an extent as to affect prejudicially
the owner of the copyright ; or
(d) by way of trade exhibits in public any infringing copy of any
such work : or
(e) imports for sale or hire into the United Kingdom any infringing
copy of any such work :

he shall be guilty of an offence under this Act and be liable on summary conviction to a fine not exceeding forty shillings for every copy dealt with in contravention of this section, but not exceeding fifty pounds in respect of the same transaction ; or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(2) If any person knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be guilty of an offence under this Act, and be liable on summary conviction to a fine not exceeding fifty pounds, or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(3) The Court before which any such proceedings are taken may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the Court may think fit.

2 Edw. 7,
c. 15, 6 Edw.
7, c. 36. (4) Nothing in this section shall, as respects musical works, affect the provisions of the Musical (Summary Proceedings) Copyright Act, 1902, or the Musical Copyright Act, 1906.

12. Any person aggrieved by a summary conviction of an offence under the foregoing provisions of this Act may in
Appeals to quarter sessions. 'England and Ireland appeal to a Court of quarter sessions and in Scotland under and in terms of the Summary Jurisdiction (Scotland) Acts.

Extent of provisions
as to summary
remedies.

13. The provisions of this Act with respect to summary remedies shall extend only to the United Kingdom.

Importation of Copies.

Importation of
copies.

14. (1) Copies made out of the United Kingdom of any work in which copyright subsists which if made in the United Kingdom would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Commissioners of Customs and Excise, that he is desirous that such copies should not be imported into the United Kingdom, shall not be so imported, and shall, subject to the provisions of this section, be deemed to be included in the table of prohibitions and restrictions contained in section 42 of the Customs Consolidation Act, 1876, and that section shall apply accordingly.

39 and 40
Vict. 686.

(2) Before detaining any such copies or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs and Excise may require the regulations under this section, whether as to information, conditions or other matters, to be complied with and may satisfy themselves in accordance with those regulations that the copies are such as are prohibited by this section to be imported.

(3) The Commissioners of Customs and Excise may make regulations, either general or special, respecting the detention and forfeiture of copies, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) The regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(5) The regulations may provide for the informant reimbursing the Commissioners of Customs and Excise all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention; and may provide for notices under any enactment repealed by this Act being treated as notices given under this section.

(6) The foregoing provisions of this section shall have effect as if they were part of the Customs Consolidation Act, 1876: Provided that, notwithstanding anything in that Act, the Isle of Man shall not be treated as part of the United Kingdom for the purposes of this section.

(7) This section shall, with the necessary modifications, apply to the importation into a British possession to which this Act extends of copies of works made out of that possession.

Delivery of Books to Libraries.

15. (1) The publisher of every book published in the United Kingdom shall, within one month after the publication, deliver, at his own expense, a copy of the book to the trustees of the British Museum, who shall give a written receipt for it.

Delivery of copies
to British Museum
and other libraries.

(2) He shall also, if written demand is made before the expiration of twelve months after publication, deliver within one month after receipt of that written demand or, if the demand was made before publication, within one month after publication, to some depot in London named in the demand a copy of the book for, or in accordance with the directions of, the authority having the control of each of the following libraries, namely, the Bodleian Library, Oxford, the University Library, Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library of Trinity College, Dublin, and subject to the provisions of this section the National Library of Wales. In the case of an encyclopædia, newspaper, review, magazine, or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published.

(3) The copy delivered to the trustees of the British Museum shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and shall be bound, sewed, or stitched together, and on the best paper on which the book is printed.

(4) The copy delivered for the authorities mentioned in this section, shall be on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.

(5) The book of which copies are to be delivered to the National Library of Wales shall not include books of such classes as may be specified in regulations to be made by the Board of Trade.

(6) If a publisher fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding five pounds and the value of the book, and the fine shall be paid to the trustees or authority to whom the book ought to have been delivered.

(7) For the purposes of this section, the expression "book" includes every part or division of a book, pamphlet, sheet of letter-press, sheet of music, map, plan, chart or table separately published, but shall not include

any second or subsequent edition of a book unless such edition contains additions or alterations either in the letter-press or in the maps, prints or other engravings belonging thereto.

Special Provisions as to certain Works.

16. (1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licenses a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author.

(2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid.

(3) For the purposes of this Act, "a work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

(4) Where a married woman and her husband are joint authors of a work, the interest of such married woman therein shall be her separate property.

17 (1) In the case of a literary dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public, nor, in the case of a lecture, been delivered in public, before that date, Copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter, and the proviso to section 3 of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

(2) The ownership of an author's manuscript after his^d death where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work, which has not been published nor performed in public nor delivered in public, shall be *prima facie* proof of the copyright being with the owner of the manuscript.

18. Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Government department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work.

19. (1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically re-produced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make within the parts of His Majesty's dominions to which this Act extends records, perforated rolls or other contrivances by means of which the work may be mechanically performed, if such person proves—

- (a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and
- (b) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned :

Provided that—

- (i) nothing in this provision shall authorize any alterations in, or omissions from, work re-produced, unless contrivances re-producing the work subject to similar alterations and omissions

have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and

- (ii) for the purposes of this provision, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically re-produced.

(3) The rate at which such royalties as aforesaid are to be calculated shall—

- (a) in the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per cent. ; and
- (b) in the case of contrivances sold as aforesaid after the expiration of that period, five per cent.,

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance shall, in no case, be less than a half-penny for each separate musical work in which copyright subsists reproduced thereon, and, where the royalty calculated as aforesaid includes a fraction of a farthing, such fraction shall be reckoned as a farthing :

Provided that, if, at any time after the expiration of seven years from the commencement of this Act, it appears to the Board of Trade that such rate as aforesaid is no longer equitable, the Board of Trade may, after holding a public inquiry, make an order either decreasing or increasing that rate to such extent as under the circumstances may seem just, but any order so made shall be provisional only and shall not have any effect unless and until confirmed by Parliament ; but, where an order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision.

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons, the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration.

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed inquiries, be deemed to have

given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time.

(6) For the purposes of this section, the Board of Trade may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such regulations may, if the Board think fit, include regulations requiring payment in advance or otherwise securing the payment of royalties.

(7) In the case of musical works published before the commencement of this Act, the foregoing provisions shall have effect, subject to the following modifications and additions :—

- (a) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work, shall not apply :
- (b) The rate of two and one-half per cent., shall be substituted for the rate of five per cent. as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the first day of July, nineteen hundred and thirteen, if contrivances re-producing the same work had been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Act extends before the first day of July, nineteen hundred and ten :
- (c) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignee, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives :
- (d) The saving contained in this Act of the rights and interests arising from, or in connection with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section :
- (e) Where the work is a work on which copyright is conferred by Order in Council relating to a foreign country, the copyright

so conferred shall not, except to such extent as may be provided by the Order, include any rights with respect to the making of the records, perforated rolls, or other contrivances by means of which the work may be mechanically performed.

(8) Notwithstanding anything in this Act, where a record, perforated roll, or other contrivances by means of which sounds may be mechanically re-produced has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived.

Provided that—

- (i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright; and
- (ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance.

20. Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.

Provision as to political speeches.

21. The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

Provisions as to photographs.

22. (1) This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

Provisions as to designs registrable under 7 Edw. 7. c. 29.

(2) General rules under section 86 of the Patents and Designs Act, 1907, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid.

23. If it appears to His Majesty that a foreign country does not give, or has not undertaken to give, adequate protection to

Works of foreign author first published in parts of His Majesty's dominions to which Act extends.

the works of British authors, it shall be lawful for His Majesty by Order in Council to direct that such of the provisions of this Act as confer copyright on works first published within the parts of His Majesty's dominions to which this Act extends, shall not apply to works published after the date specified in the Order, the authors whereof are subjects or citizens of such foreign country, and are not resident in His Majesty's dominions, and thereupon those provisions shall not apply to such works.

24. (1) Where any person is immediately before the commencement of this Act entitled to any such right in any work

Existing works.

as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of that schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder :

Provided that—

- (a) if the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right of interest shall be entitled at his option either;
 - (i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration; or
 - (ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such

royalties to the author as failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment ;

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the London Gazette and in two London newspapers :

- (b) Where any person has, before the twenty-sixth day of July nineteen hundred and ten, taken any action whereby he has incurred any expenditure or liability in connexion with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connexion with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

(2) For the purposes of this section, the expression "author" includes the legal personal representatives of a deceased author.

(3) Subject to the provisions of section nineteen, sub-sections (7) and (8) and of section thirty-three of this Act, copy-right shall not subsist in any work made before the commencement of this Act, otherwise than under, and in accordance with, the provisions of this section.

Application to British Possessions.

25. (1) This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions: Provided that it shall not extend to a self-governing dominion, unless declared by the Legislature of that dominion to be in force therein either without any modifications, or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature.

(2) If the Secretary of State certifies by notice published in the London Gazette that any self-governing dominion has passed legislation under which works, the authors whereof were at the date of the making

of the works British subjects resident elsewhere than in the dominion or (not being British subjects) were resident in the parts of His Majesty's dominions to which this Act extends, enjoy within the dominion rights substantially identical with those conferred by this Act, then, whilst such legislation continues in force, the dominion shall for the purposes of the rights conferred by this Act, be treated as if it were a dominion to which this Act extends; and it shall be lawful for the Secretary of State to give such a certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, manufactured in a foreign country, under the law of the dominion, differ from those under this Act.

26.(1) The Legislature of any self-governing dominion may, at any time, repeal all or any of the enactments relating to copyright passed by Parliament (including this Act) so far as they are operative within that dominion: Provided that no such repeal shall prejudicially affect any legal rights existing at the time of the repeal, and that, on this Act or any part thereof being so repealed by the Legislature of a self-governing dominion, that dominion shall cease to be a dominion to which this Act extends.

(2) In any self-governing dominion to which this Act does not extend, the enactments repealed by this Act shall, so far as they are operative in that dominion, continue in force until repealed by the Legislature of that dominion.

(3) Where His Majesty in Council is satisfied that the law of a self-governing dominion to which this Act does not extend provides adequate protection within the dominion for the works (whether published or unpublished) of authors who at the time of the making of the work were British subjects resident elsewhere than in that dominion, His Majesty in Council may, for the purpose of giving reciprocal protection, direct that this Act, except such parts (if any) thereof as may be specified in the order, and subject to any conditions contained therein, shall, within the parts of His Majesty's dominions to which this Act extends, apply to works the authors whereof were, at the time of the making of the work, resident within the first mentioned dominion, and to works first published in that dominion; but, save as provided by such an Order, works the authors whereof were resident in a dominion to which this Act does not extend shall not, whether they are British subjects or not, be entitled to any protection under this Act except such protection as is by this Act conferred on works first published within the parts of His Majesty's dominions to which this Act extends:

Provided that no such order shall confer any rights within a self-governing dominion, but the Governor in Council of any self-governing dominion to which this Act extends, may, by order, confer within that

dominion the like rights as His Majesty in Council is, under the foregoing provisions of this sub-section, authorised to confer within other parts of His Majesty's dominions.

For the purposes of this sub-section, the expression "a dominion to which this Act extends" includes a dominion which is for the purposes of this Act to be treated as if it were a dominion to which this Act extends.

27. The Legislature of any British possession to which this Act extends may modify or add to any of the provisions of this Act in its application to the possession, but, except so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof were, at the time of the making of the work, resident in the possession, and to works first published in the possession.

28. His Majesty may, by Order in Council, extend this Act to any territories under his protection and to Cyprus, and, on the making of any such Order, this Act shall, subject to the provisions of the Order, have effect as if the territories to which it applies or Cyprus were part of His Majesty's dominions to which this Act extends.

PART II

International Copyright.

29. (1) His Majesty may, by Order in Council, direct that this Act (except such parts, if any, thereof as may be specified in the Order) shall apply—

- (a) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the parts of His Majesty's dominions to which this Act extends ;
- (b) to literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were at the time of the making of the work subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were British subjects ;
- (c) in respect of residence in a foreign country to which the order relates, in like manner as if such residence were residence in the parts of His Majesty's dominions to which this Act extends ;

and thereupon, subject to the provisions of this Part of this Act and of the Order, this Act shall apply accordingly :

Provided that—

- (i) before making an Order in Council under this section in respect of any foreign country (other than a country with which His Majesty has entered into a convention relating to copyright), His Majesty shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to His Majesty expedient to require for the protection of works entitled to copyright under the provisions of Part I of this Act ;
- (ii) the Order in Council may provide that the term of copyright within such parts of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates ;
- (iii) the provisions of this Act as to the delivery of copies of books shall not apply to works first published in such country, except so far as is provided by the Order ;
- (iv) the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order ;
- (v) in applying the provision of this Act as to owner-ship of copyright, the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country ;
- (vi) in applying the provisions of this Act as to existing works, the Order in Council may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section 5 of the International Copyright Act, 1886.

49 & 50 Vict.
C. 33.

(2) An order in Council under this section may extend to all the several countries named or described therein.

30. (1) An order in Council under this part of this Act shall apply to all His Majesty's dominions to which this Act extends except self-governing dominions and any other possession specified in the order with respect to which it appears to His Majesty expedient that the order should not apply.

(2) The Governor in Council of any self-governing dominion to which this Act extends may, as respects that dominion, make the like orders as under this Part of this Act His Majesty in Council is authorised to make

Application of Part
II to British posses-
sions.

with respect to His Majesty's dominions other than self-governing dominions, and the provisions of this Part of this Act shall, with the necessary modifications, apply accordingly.

(3) Where it appears to His Majesty expedient to except from the provisions of any order any part of his dominions not being a self-governing dominion, it shall be lawful for His Majesty by the same or any other Order in Council to declare that such order and this Part of this Act shall not, and the same shall not, apply to such part, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order.

PART III.

SUPPLEMENTAL PROVISIONS.

31. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

32. (1) His Majesty in Council make Orders for altering, revoking, or varying any Order in Council made under this Act, or under any enactments repealed by this Act, but any Order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the Order comes into operation, and shall provide for the protection of such rights and interests.

(2) Every Order in Council made under this Act shall be published in the London Gazette and shall be laid before both Houses of Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

33. Nothing in this Act shall deprive any of the Universities and Colleges mentioned in the Copyright Act, 1775, of any 15 Geo. 3, c. Saving of University copyright. copyright they already possess under that Act, but the remedies and penalties for infringement of any such copyright shall be under this Act and not under that Act.

34. There shall continue to be charged on, and paid out of, the Consolidated Fund of the United Kingdom such annual compensation as was immediately before the commencement of this Act payable in pursuance of any Act as compensation to a library for the loss of the right to receive gratuitous copies of books:

* Provided that this compensation shall not be paid to a library in any year, unless the Treasury are satisfied that the compensation for the previous year has been applied in the purchase of books for the use of and to be preserved in the library.

Interpretation. 35. (1) In this Act, unless the context otherwise requires.—

"Literary work" includes maps, charts, plans, tables and compilations ;

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character :

"Artistic work" includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs ;

"Work of sculpture" includes casts and models ;

"Architectural work of art" means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction ;

"Engravings" include etchings, lithographs, wood-cuts, prints and other similar works, not being photographs ;

"Photograph" includes photo-lithograph and any work produced by any process analogous to photography ;

"Cinematograph" includes any work produced by any process analogous to cinematography ;

"Collective works" means—

(a) an encyclopædia, dictionary, year book, or similar work ;

(b) a newspaper, review, magazine, or similar periodical ; and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated ;

"Infringing," when applied to a copy of a work in which copyright subsists, means any copy, including any colourable limitation, made, or imported in contravention of the provisions of this Act ;

"Performance" means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument ;

"Delivery," in relation to a lecture, includes delivery by means of any mechanical instrument ;

"Plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made ;

"Lecture" includes address, speech, and sermon ;

"Self-governing dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.

(2) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors, administrators or assigns.

(3) For the purposes of this Act, a work shall be deemed to be first published within the parts of His Majesty's dominions to which this Act extends, notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of His Majesty's dominions as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may, for the time being, be fixed by Order in Council.

(4) Where, in the case of an unpublished work, the making of a work has extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with, if the author was, during any substantial part of that period, a British subject or a resident within the parts of His Majesty's dominions to which this Act extends.

(5) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident in the parts of His Majesty's dominions to which this Act extends if he is domiciled within any such part.

36. Subject to the provisions of this Act, the enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule:

Provided that this repeal shall not take effect in any part of His Majesty's dominions until this Act comes into operation in that part.

Short title and commencement. **37. (1)** This Act may be cited as **the Copyright Act, 1911.**

(2) This Act shall come into operation—

- (a) in the United Kingdom, on the 'first day of July nineteen hundred and twelve or such earlier date as may be fixed by Order in Council ;
- (b) in a self-governing dominion to which this Act extends, at such date as may be fixed by the Legislature of that dominion ;
- (c) in the Channel Islands, at such date as may be fixed by the States of those islands respectively ;
- (d) in any other British possession to which this Act extends, on the proclamation thereof within the possession by the Governor.

(Notes).

Act extended to India.

By the proclamation issued by the Governor-General of India in Council in October last, this Act has been extended to India.

FIRST SCHEDULE.

EXISTING RIGHTS.

Existing Right.	Substituted Right.
(a) <i>In the case of Works other than Dramatic and Musical Works.</i>	
Copyright.	Copyright as defined by this Act.
(b) <i>In the case of Musical and Dramatic Works.</i>	
Both copyright and performing right.	Copyright as defined by this Act.
Copyright, but not performing right.	Copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public.
Performing right, but not copyright.	The sole right to perform the work in public but none of the other rights comprised in copyright as defined by this Act.

For the purposes of this Schedule the following expressions, where used in the first column thereof, have the following meanings :—

"Copyright," in the case of a work which according to the law in force immediately before the commencement of this Act has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law (if any) to restrain publication or other dealing with the work ;

"Performing right," in the case of a work which has not been performed in public before the commencement of this Act, includes the right at common law (if any) to restrain the performance thereof in public.

SECOND SCHEDULE.
ENACTMENTS REPEALED.

Section and chapter.	Short title.	Extent of repeal.
8 Geo. 2, c. 13	The Engraving Copyright Act, 1734.	The whole Act.
7 Geo. 3, c. 38	The Engraving Copyright Act, 1767.	The whole Act.
15 Geo. 3, c. 53	The Copyright Act, 1775.	The whole Act.
17 Geo. 3, c. 57	The Prints Copyright Act, 1777.	The whole Act.
54 Geo. 3, c. 56	The Sculpture Copyright Act, 1814.	The whole Act.
3 & 4 Will. 4, c. 15	The Dramatic Copyright Act, 1833.	The whole Act.
5 & 6 Will. 4, c. 65	The Lectures Copyright Act, 1835.	The whole Act.
6 & 7 Will. 4, c. 59.	The Prints and Engravings Copyright (Ireland) Act, 1836.	The whole Act.
6 & 7 Will. 4, c. 110.	The Copyright Act, 1836.	The whole Act.
5 & 6 Vict. c. 45.	The Copyright Act, 1842.	The whole Act.
7 & 8 Vict. c. 12.	The International Copyright Act, 1844.	The whole Act.
10 & 11 Vict. c. 95.	The Colonial Copyright Act, 1847.	The whole Act.
15 & 16 Vict. c. 12.	The International Copyright Act, 1852.	The whole Act.
25 & 26 Vict. c. 68.	The Fine Arts Copyright Act, 1862.	Sections one to six. In section eight the words "and pursuant to any Act for the protection of copyright engravings," and "and in any such Act as aforesaid." Sections nine to twelve.
38 & 39 Vict. c. 12.	The International Copyright Act, 1875	The whole Act.
39 & 40 Vict. c. 36.	The Customs Consolidation Act, 1876.	Section forty-two, from "Books wherein" to "such copyright will expire." Sections forty-four, forty-five, and one hundred and fifty-two.
45 & 46 Vict. c. 40.	The Copyright (Musical Compositions) Act, 1882.	The whole Act.
49 & 50 Vict. c. 33.	The International Copyright Act, 1886.	The whole Act.
51 & 52 Vict. c. 17.	The Copyright (Musical Compositions) Act, 1888.	The whole Act.
52 & 53 Vict. c. 42.	The Revenue Act, 1889.	Section one, from "Books first published" to "as provided in that section"
6 Edw. 7, c. 36.	The Musical Copyright Act, 1906.	In section three the words "and which has been registered in accordance with the provisions of the Copyright Act, 1842, or of the International Copyright Act, 1844, which registration may be effected notwithstanding anything in the International Copyright Act, 1886."

THE INDIAN COPYRIGHT ACT, 1847.

TABLE OF CASES NOTED IN THIS ACT.

I. L. R. Allahabad Series.			PAGE
2 A 74 (90)	... Uda Begam v. Imam-ud-din	...	6
11 A 262 (266)	... Queen-Empress v. Indarjit	...	5, 6
14 A 145 (154)	... Kadir Bakhsh v. Bhawani Prasad	...	6
I. L. R. Bombay Series.			
2 B 19 (38)	... Baban Mayach v. Nagu Shrivuoha	...	6
11 B 551 (552)	... Waghola Rajsanji v. Shekh Maeludin	...	5
13 B 358	... Ganga Vishnu Srikisondas v. Morehvar Bapuji Hegishto	...	46
14 B 586 (589)	... Munshi Shaik Abdurruhman v. Mirz Mahomed Shirazi	...	44, 46
19 B 557	... Macmillan v. Khan Bahadur Shamsul Ulaman Yaka	...	44, 46, 49
I. L. R. Calcutta Series.			
6 C 499	... <i>In the matter of the petitions of</i> Hameedoolah	...	48
6 C 707 (708)	... <i>In the matter of the petition of</i> Ishan Chunder Roy	...	5
7 C 333 (336)	... Roberts v. Harrison	...	5
14 C 176 (183)	... Kristo Nath Koondoo v. T. F. Brown	...	6
17 C 951	... Macmillan v. Suresh Chunder Deb	...	47, 54, 56
33 C 571	... Abdoolla Bhay Sarafalli v. Ismail Bin Shaikh Badal	...	31, 32, 56, 57
35 C 463	... Lawrence v. Bushnell	...	37
I. L. R. Madras.			
29 M 292	... Sabapathy Mudaliar v. Seethramaiah	...	54, 56
The Allahabad Law Journal.			
7 A L J 923	... Ram Kishun v. Piarey Lal	...	49, 53
Bengal Law Reports.			
8 B L R 298	... Baker v. Sutherland	...	21
Bombay High Court Reports.			
3 B H C R O C 45 (47)	... The Gujarat Trading Company v. Trikamji Velji	...	
9 B H C (A C) 205 (215)	... The Collector of Ahmedabad v. Samaldas Bechar-	...	5.
9 B H C R 321 (332)	... W Nicol and Company v. J. S. Castle	...	6
Bombay Law Reporter.			
4 Bom L R 547	... Sham Koer v. Dah Koer	...	6
Calcutta Law Journal.			
1 C L J 278 (281)	... Ismail Bin Sheikh Badal v. Allibhai Sarafali	...	27, 32, 33
2 C L J 511 (514)	... Abdoolla Bhay Sarafalli v. Ismail Bin Shaikh Badal	...	31, 32, 56, 57

TABLE OF CASES.

Calcutta Law Reports.		PAGE
7 C L R 471 (473) ...	<i>In the matter of Sheikh Hamiddollah v. Mahomed Asgorhossein</i> ...	48
8 C L R 52 ...	<i>In the matter of Ishan Chunder Roy</i> ...	5
9 C L R 209 ...	<i>H. Roberts v. T. B. Harrison</i> ...	5

Calcutta Weekly Notes.		
4 C W N COXVI ...	<i>Fulchand and Soboranchand v. Mussammat Kismesh Koer</i> ...	5
9 C W N 591 ...	<i>Ismail Bin Sheikh Badal v. Allibhai Sarafali</i> ...	27, 32, 33
10 C W N 134 ...	<i>Abdoola Bhoy Sarafalli v. Ismail Bin Shaikh Badul</i> ...	31, 32, 56, 57
12 C W N 753 ...	<i>S. Lawrence v. W. Bushnell</i> ...	37

Central Provinces Law Reports.		
9 C P L R 65 (67) ...	<i>Rao Bahadur Makund Balkrishna Buti, (deceased) heirs sons Govind Rao and Gopal Rao v. I. Purnia (deceased) heir widow, Mt. Sunder and 2. Venkanna (security). II Mt. Puneo and 3 others</i> ...	5

Madras High Court Reports.		
2 M H C R 322 ...	<i>Chinna Aiyar v. Mahomed Fakr-u-din Saib</i> ...	6

Punjab Records.		
45 P R 1868 ...	<i>Leitner v. Plowden</i> ...	26
* 15 P R 1893 ...	<i>Dewan Buta Singh v. Munshi Jagat Narain</i> ...	30, 44, 49
46 P R 1893 ...	<i>Yaro v. Adil</i> ...	30

Punjab Law Reporter.		
95 P L R 1910 ...	<i>Girdhari Lal v. Devi Dial</i> ...	46

Sutherland's Weekly Reporter.		
9 W R (404) ...	<i>Hurro Chunder Roy Chowdhry v. Shoorodhonee Debia</i> ...	5
16 W R 90 ...	<i>Baker v. Sutherland</i> ...	21

Indian Cases.		
7 Ind Cas 101 ...	<i>Ram Kishen v. Piare Lal</i> ...	49, 53
8 Ind Cas 497 ...	<i>Gridhari Lal v. Devi Dial</i> ...	46

English Cases.

A

<i>Abernethy v. Hutchinson, (1825) 1 Hall & T W 28 ; 3 L J (Ch) (O S) 209 (213)</i> ...	17, 25
<i>Ager v. Collingridge, (1886) 2 T L R 291</i> ...	14
<i>Augustus Gabriel Roussac and Bengal Printing Company, Limited v. Thacker and others, 1 Hyde 9</i> ...	37

B

<i>Baschat v. London Illustrated Standard Co, (1900) 1 Ch 73</i> ...	18
<i>Black v. Imperial Book Co, (1903) 5 Ontario L R 184</i> ...	29
<i>Blanchete v. Imgram, (1887) 3 T L R 887</i> ...	23
<i>Blank v. Footman, (1888) 39 Ch Div 678</i> ...	25
<i>Bonicault v. Chatterton, (1876) 5 Ch D 267 C A</i> ...	23

* This is wrongly printed as 15 P. R. 1883.

TABLE OF CASES.

English Cases—(Continued).		PAGE
Borthwick v. Evening Post, (1888) 37 Ch D 449 C A	...	12
Bradbury v. Hothen, (1872) LR 8 Ex 1	...	11, 40
Braywell v. Halcomb, (1886) 4 My & Cr 737	...	39
Britain v. Kennedy, (1902) 19 I L R 122	...	50
Butterworth v. Kelly, (1888) 4 T L R 430	...	38
Butterworth v. Robinson, * (1901) 5 Ves 709	...	14, 15
C		
Caird v. Sime, (1887) 12 App Cas 326 (343)	...	8, 24, 25
Cary v. Kearsely, (1802) 4 Esp 168	...	40
— v. Longman, (1801) 1 East 358	...	16
Cassell v. Stiff, (1856) 2 K and J 279	...	28
Chappell v. Purday, (1845) 14 M & W 316	...	6, 8
Chilton v. Progress Printing and Publishing Co, (1895) 2 Ch 29 (33) & 34.	...	11, 12
Clement v. Maddick, (1859) 1 Giff 98	...	34
Collette v. Goode, (1878) 7 Ch Div 842	...	28
Coffingridge v. Emmott, (1887) 57 L T 864 ; W N (1887) 216 ; 4 T L R 99	...	28
Collis v. Cater, (1898) 78 L T 613	...	10
Coote v. Judo, (1883) 23 Ch D 727	...	29
Cory v. Kearsley, (1892) 4 Esp 170 ; 6 R R 846	...	34
D		
Dalglish v. Jarwie, (1850) 2 Mac & Gor 231, 2 H & T 437 and 25 & 26 Vic, c 68	...	25
D'Almaine v. Boosey, (1835) 1 Y & C Ex 298	...	13
Dick v. Yates, (1881) 18 Ch D 77	...	8
Dickens v. Lee, (1844) 8 Jur 183	...	13
Dicks v. Yates, 18 Ch D 76 (92)	...	9
— v. —, (1881) 18 Ch D 76 C A	...	12
— v. —, 18 Ch D at p 90	...	21, 22
Duck v. Bates, (1884) 13 Q B D 843 C A	...	25
E		
Exchange Telegraph Co, Ltd v. Central News, Ltd, (1897) 2 Ch 48	...	23
— v. Gregory Co, (1896) 1 Q B 417 (453)	...	55
F		
Fellows v. Clay, 5 Q B 318	...	6
Forrester v. Walker, (1741) cited 2 Bro P C 198	...	18
G		
Gillbert v. Newberry, Loft's Rep 775	...	13
Grace v. Newman, L R 19 Eq 623	...	12
Gyles v. Wilox, (1740) 2 Atk 141	...	13
H		
Hale v. Bradbury, (1879) 12 Ch D 886	...	50
Hatten v. Arthur, (1863) 32 L J Ch 771	...	14
Hildesheimer & Faulkner v. Dunn & Co, (1891) 64 L T 452 ; W N (1891) 66	...	29
Hinie v. Dale, (1803) cited 2 Camp 38	...	18
Hogg v. Scott, (1874) L R 18 Eq 444	...	41
Hollinrake v. Truswell, (1894) 3 Ch at p 427 (428)	...	11, 12
Hutchings v. Steard, (1881) W N 20	...	12

* This is wrongly printed as 5 Ves 607 at p. 14.

English Cases—(Continued).

L'AGH

J

Jarold v. Houston, (1857) 3 K & J 708	...	11
Jeffreys v. Boosey, (1854) 4 H L C 815, 816, 867, 869, 920, 962	...	7, 17, 19, 25
Jodonanth Mullick v. Yawarally, Gasper 182	...	47
_____ v. _____, 2 I D O S 949	...	47
_____ v. _____, M M Ismail, 3 I D O S 762 (764)	...	47

K

Kelley v. Morris, L R 1 Eq 687, 692, 697, 701	...	10, 11, 12, 14
Kenrick v. Lawrence & Co, (1890) 25 Q B D 99	...	26

L

Lamb v. Evans, (1893) 1 Ch 218	...	14
_____ v. _____, (1892) 3 Ch 462	...	37
Land v. Greenbery, (1908) 24 T L R 441	...	13
Laurie v. Rened, (1892) 3 Ch D 402 (414)	...	17
Lawrence v. Dana, 2 Am L T R (N S) 423	...	11
_____ v. _____, 4 Cliff 1	...	45
_____ v. Smith, (1822) 1 Jac 471	...	18
Leslie v. Young and Sons, (1894) A C 335	...	8, 14, 46
Lewis v. Fullerton, (1839) 2 Beav 6 (8)	...	11, 34
Licensed Victualler's Newspaper Co. v. Bingham, (1888) 38 Ch D 139	...	
C A	...	12, 22
Liverpool General Brokers Association v. Commercial Press, (1897) 2	...	
Q B 1	...	29
London Printing Co. v. Cox, (1891) 3 Ch at p 303	...	29
_____ and Publishing Alliance, Ltd. and Keep and Co. v. Cox,	...	
(1891) 3 Ch 291; 7 T L R 738	...	29
Low v. Routledge, (1865) 33 L J (N S) Ch 717	...	28

M

Macfarlane and Co. v. Oak Foundry Co., (1883) 10 C of S Cas (Sc) 801	...	37
Mack v. Peter, (1872) L R 14 Eq 431	...	12
Macklin v. Richardson and Goubiand v. Wallace, 7 Ruling Cases, 66, 67,	...	
70, 128	...	56
Macmillan and Co. v. Dent, (1907) 1 Ch 107 C A	...	18
Manley v. Owen, (1755) cited 4 Burr 2329	...	18
Mansell v. Valley Printing Co, (1908) 1 Ch 567	...	53
Marzills v. Gibbons, (1874) L R 9 Ch 518	...	45
Mason v. Murray, 1777 cited 1 East 360	...	16
Mathieson v. Harrod, (1868) L R 7 Eq 270; 38 L J Ch 139; 19 L T (N S)	...	
629; 17 W R 99	...	28
Mattheewson v. Stockdale, (1806) 17 Ves 270	...	15
Mawman v. Tegg, (1826) 2 Russ 355 (393)	...	46
_____ v. _____, (1826) 2 Russ 385; 26 R R 112	...	16, 39
McFarlane v. Hulton, (1899) 1 Ch D 884	...	23, 24
McLean v. Moody, 20 Sess Cas 1154	...	45
Mifflin v. Dutton, (1901) 107 Fed Rep 708	...	24
Millar v. Tayler, (1769) 4 Burr 2362 to 2378	...	17, 18
Millett v. Snowden, 1 West L J (Amer) 240	...	34
Moffat and Paige v. Gill & Sons, (1902) 86 L T 465	...	15
_____ v. _____, (1901) 84 L T 452; (1902) 96 L T 465	...	34

TABLE OF CASES.

English Cases—(Continued).

	PAGE
Morison v. Moat, (1851) 9 Hare 257	17
Muddock v. Blackwood, (1893) 1 Ch 58	50

N

Nichols v. Ruggles, 3 Day (Amer) 158	34
Nicole v. Pitman, (1884) 26 Ch D 374 (379)	25, 46
North v. Jackson, (1883) 11 Q B D 637	26

Palmer v. Dewitt, (1870) 23 L T 823	...	23
Parton v. Prang, 3 Cliff (Amer) 548	...	19
Pike v. Nicholas, (1870) L R 5 Ch 251; 18 W R 321; 39 L J (Ch) 435	...	11, 36
— v. —, (1869) 38 L J (Ch) 529; 20 L T (N S) 906	...	36
Plage v. Wisden, (1869) 20 L T 435	...	12
Powell v. Kempton Part, (1899) A C 143, 157	...	5
Prince Albert v. Strange, (1849), 2 De G and Sm & G 25	...	24
— v. —, (1849) 2 De G and Sm 686; 1 Mac and Gor 42;	...	25
1 Hall and Tw 1	...	

R

Reg v. Haughton, El and Bl 501

S

Salkeld v. Johnstou, 3 Q B 313	5
— v. —, 1 Hare 196	6
Saunders v. Smith, (1838) 3 My and Cr 711	39
Scott v. Stanford, (1867) Law Rep 3 Eq 723	34
Shove v. Schmincke, 33 Ch D 546	12
Slingsby v. Bradford Patent Truck and Trolley Co, (1905) W N 122	18
Smith v. N S W Ry Co, 23 L J Ch 562	47
Southy v. Sherwood, (1817) 2 Mer 435	18
Spiers v. Brown, (1858) 6 W R 352	9, 15, 35, 41
Stannard v. Harrison, (1871) 24 L T 570	26
Story v. Holcombe, (1847) 4 Ohio (Amer) 306	34
Story's Executors v. Holcombe, 4 McLean (Amer) 314	43
Story's Exors v. Holcombe, 4 McLean, 306	13, 15
Stowe v. Thomas, 9 Wall C Ct (Amer) 547; 2 Amer L Reg 231	35
Sweet v. Benning, (1855) 16 C B 491	16

T

Tarquand v. Board of Trade, 11 App Cas 286	5
Thisleton v. Frewer, 31 L J Ex 230	5
Tinsley v. Lacy, (1861) 1 H and N 747	38
— v. —, (1813) 1 Hem & M 747	55
Tomson v. Walker, 1752, cited 1 East 301	14
Turner v. Robinson, (1860) 10 Ir Ch 510	25
Troitzsch v. Rees, (1887) 3 Times L R 773	29

W

Wallenstein v. Herbert, (1867) 16 L T 453	...	26
Walter v. Howe, (1881) 17 Ch D 708	...	21
— v. Lane, (1899) 2 Ch 749 (772)	...	9
— v. —, (1900) A C 539, 546 (552)	...	10, 11, 21, 26

English Cases—(Concluded).		PAGE
Warne & Co. v. Seebohm, (1888) 39 Ch D 73 (83)	...	50
Weatherby and Sons International Horse Agency and Exchange Ltd, <i>In re</i> , (1910) 2 Ch 297 (305)	...	37
Webb v. Rose, (1732) 4 Burr 2330	...	18
Weldon v. Dicks, (1878) 10 Ch D 247	...	12, 21, 29
Wheaton v. Peters, (1834) 8 Peters, S C R (Amer) 591; 2 Story, Eq Jur S 943	...	18
White v. Geroch, (1819) 1 Chitt 24, 2 B & Ald 298, 22 R R 786	...	25
Wilkins v. Aikin, (1810) 17 Ves 422, 423	13, 15, 16, 39, 41, 42	42
Wolff v. Wood, (1900) Times, Oct 31 p 5	...	50
Wood v. Boosy, (1868) L R 3 Q B 223, Ex Ch	...	26
— v. —, (1867) L R 2 Q B 340 (351)	...	29
— v. Chart, (1870) L R 10 Eq 193	...	16
Woolsey v. Judd, 4 Duer (Amer) 385	...	18
Wright v. Tallis, 1 C B 893	...	18
Wyat v. Bernard, (1814) 3 Ves and B 77	...	12

THE INDIAN COPYRIGHT ACT, 1847.

INDEX.

Note.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S, in Brevier Roman denotes the section.

A

Abridgment, Copyright in, *S—B*, 13.

Compilation and,—Copyright, *I—M*, 15.

Bigest or a compilation differs from an, *Q*, 16.

Infringement by, *G—J*, 42, 43.

And a compilation, *K*, 43.

Act XX of 1847, Preamble, 3.

Short title, *A*, 4.

Places where, has been declared to be in force, *B*, 4.

A reproduction of 5 and 6 Vict. Cap. 45, *C*, *D*, 8.

Entry in registry to be made before Copyright proprietor can proceed under, *S*, 14, 56.

Limitation of criminal proceedings for breach of, *S*, 16, 57, 58.

Act XXV of 1867, Registration under, *N*, 27.

Jurisdiction—Supreme Court of Calcutta, *Q—S*, 32.

S, 18—Expunging entry from the Catalogue of books kept in Bombay—Jurisdiction of the High Court of Calcutta—24 and 25 Vic. c. 104, *S*, 9—Acquiring of copyright to British India by foreigner residing abroad, *T—W*, 32, 33.

Almanac, Burden of proof—Injunction, *H—I*, 46.

Annotation, Copyright—Non copyright work, *V*, 16.

Ancient religious works annotated, Copyright—Infringement—Suit for injunction and damages, *X—Z*, 54, 55.

Article, Consent of author to publication singly, *S*, 10, 52.

Assignee, must register, *D*, 29.

Assignment, Registry of Copyright, *S*, 3, 27—29.

Of Copyright by entry in registry, *S*, 5, 30.

Of Copyright, *K*, 30.

Of Copyright exempted from stamp-duty, *L*, 31.

Registry not showing assignment by author to publishers the proprietors of a book, *U*, 54.

Author's right to the first publication of his own manuscript, *F*, 17, 18.

Copyright—Ownership, *X*, 20.

Duration of Copyright in book published in author's lifetime, *S*, 1, 20—26.

Copyright in book published after author's death, *S*, 1, 20—26.

right to impose restrictions preventing publication, *O—Q*, 24.

of a work who is called, *E—J*, 26.

Negligence to register, *R*, 28.

Consent of, to publication singly, *S*, 10, 52.

Registry not showing assignment by, to publishers the proprietors of a book, *U*, 54.

B

- Book*, Copyright in, published after author's death—S. 1, 20—26.
 Duration of Copyright in, published in author's lifetime, S. 1, 20—26.
 Definition, A, 21.
 Delivery, by person in possession of pirated copies of, Q, 53.
 Proprietorship of copies of, illegally printed, S. 12, 53—55.
Breach, Limitation of criminal proceedings for, of Act, S. 16, 57.
British Copyright Act, 1911. See APPENDIX, p. 58 to the end.
Burden of proof, Almanac—Infringement—Injunction, H, I, 46.

C

- Compilation*, Common sources—Copyright, C—H, 14, 15.
 and abridgment—Copyright, I—M, 15.
 Digest or a, differs from an abridgment, Q, 16.
 Abridgment and a, K, 43.
Composition, Employer's right to publish separately, S. 10, 52.
Copies, Giving, S. 3, 27—29.
 to be delivered, R, 53.
 Right of Copyright proprietor to sue for and recover, or damages, S. 13, 55.
 and limitations, distinction between, B—D, 42.
Copyright, Infringement of, see PIRACY.
 Definition and nature of, V, 6.
 Meaning, W, X, 6.
 Two senses, Y—B, 7.
 Blackstone's commentaries, C, 7, 8.
 Subject matter in general, D—G, 8.
 Whether work must be original, H—K, 8.
 Original work defined, L, M, 8, 9.
 Whether a reporter is entitled to, in his verbatim report of a public speech, N—R, 9, 10.
 Common source of information—Independent labour, S—A, 10, 11.
 Literary composition, B—E, 11.
 Literary work, F—L, 12.
 Title of a book, M—Q, 12.
 Book—Title—Adoption of a *non de plume*, R, 12.
 Abridgment, S—B, 13.
 Compilation—Common sources, C—H, 14, 15.
 Compilation and abridgment, I—M, 15.
 in judgments (written), N, O, 15.
 in—Digests, P, 15.
 Digest or a compilation differs from an abridgment, Q, 16.
 Head-notes of reports, R, S, 16.
 Editor's in marginal notes, T, 16.
 Part of work, U, 16.
 Non-copyright work—Annotation, etc., V, 16.
 Fair quotation, W, X, 16.
 Translations, Y—A, 16, 17.
 No, in mere ideas, B, 17.
 However in the material that has embodied the ideas, Q—E, 17.
 Author's right to the first publication of his own manuscript, F, 17, 18.
 refused, G—L, 18.
 Personal property, M, 18.

Copyright—(Concluded).

Nature of right of—Rights of person possessing the right, *N*, 18, 19.
as monopoly, *O*—*V*, 19.

Who may acquire, *W*, 20.

Ownership—Author, *X*, 20.

Infringement of Invasion of literary property three fold, *X*-1, *Y*, 20.

Duration of, in book published in author's lifetime, *S*, 1, 20—26.

P.—Proprietorship, *S*, 1, 20—26.

In book published after author's death, *S*, 1, 20—26.

in design—Statute Law of United Kingdom, *C*, 21.

Power to license re-publication when, proprietor refuses, *S*, 2, 26.

Registry of, assignments and licenses, *S*, 3, 27—29.

Giving copies, *S*, 3, 27—29.

Negligence to register—Author, *R*, 28.

Proprietor may be registered as trustee for another, *X*, *Y*, 28, 29.

Original publisher must be registered—Registry, *Z*, 29.

Proprietor's right to make entries in registry, *S*, 5, 30.

• Assignment of, by entry in registry, *S*, 5, 30.

Infringement—Punjab Record—Urdu translation, *I*, *J*, 30.

Proprietor—Assignment, *K*, 30, 31.

Assignment of, exempted from stamp-duty, *L*, 31.

Proprietor of,—Person aggrieved, *O*, 31.

Acquiring of, in British India by foreigner residing abroad, *T*—*W*, 32, 33.

Liability for infringement of, *S*, 7, 33—49.

• Infringement of, *O*, *P*, 36.

Plagiarism not necessarily an invasion of, *T*, 36.

Infringement—Catalogue illustrations in—Copyright in portion of publication
how far protected—Fraud on the public—Mis-statements—"Puffing" state-
ments, *Y*—*A*, 37.

• Infringement, of—No original matter—Strongest evidence of piracy necessary, *B*,
37.

What constitutes,—Infringement of—Jurisdiction, *O*, 47.

Notice to be given by defendant to plaintiff in suit for infringing, *S*, 8, 49—51.

Registration of,—Proprietorship disputed—Notice—Practice—Procedure, *K*, 51.

in encyclopædia, review, etc., *S*, 10, 51, 52.

Rights of proprietor of, on making entry in registry, *S*, 11, 52.

in selection of poems, *S*, 54.

Infringement—Suit for injunction and damages—Ancient religious works anno-
tated, *X*—*Z*, 54, 55.

Right of, proprietor to sue for and recover copies or damages, *S*, 12, 55.

Entry in registry to be made before, proprietor can proceed under Act, *S*, 14, 56,
registered and subsisting—Piracy, *I*, 56.

Omission to make entry not to affect, etc., *S*, 14, 56, 57.

Proprietor's name not registered at the time of proceeding, *N*, *O*, 57.

Costs, Plea by the defendant and special evidence in actions for things done under
Act,—Defendant to have full, if successful, *S*, 15, 57."

Criminal proceedings, Limitation of, for breach of Act, *S*, 16, 57.

D

Damages, not to exceed Rs. 500—Infringement of; Copyright—Jurisdiction of Small
Cause Court, *P*—*U*, 47, 48.

Damages—(Concluded).

Suit for injunction and,—Ancient religious works annotated—Copyright—Infringement, *X—Z*, 54, 55.

Right of Copyright proprietor to sue for and recover copies or, *S*, 13, 55.
for infringement, *B, C*, 55.

Delivery, by person in possession of pirated copies of book, *Q*, 53.

Design, Copyright in,—Statute Law of United Kingdom, *C*, 21.

Digest, Copyright in, *P*, 15.

or compilation differs from an abridgment, *Q*, 16.

Duration, of Copyright in book published in author's lifetime, *S*, 1, 20—26.

E

Editor's copyright in marginal notes, *T*, 16.

Employee's right to publish separately, *S*, 10, 52.

Encyclopedia, Copyright in *S*, 10, 51, 52.

Entry, in the Book of Registry, *P, Q*, 28.

must be correct, *S—V*, 28.

• Copyright proprietor's right to make, in registry, *S*, 5, 30.

Assignment of Copyright by, in registry, *S*, 5, 30.

Application by person aggrieved by, in registry for order to vary or expunge it, *S*, 6, 31—33.

Expunging, from the Catalogue of books kept in Bombay—Jurisdiction of the High Court of Calcutta—24 and 25 Vic. c. 104, *S*, 9—Acquiring of Copyright in British India by foreigners residing abroad, *T—W*, 32, 33.

Rights of proprietor of Copyright on making, in registry, *S*, 11, 52.

in registry to be made before Copyright proprietor can proceed under Act, *S*, 14, 56.

Omission to make, not to affect Copyright, etc., *S*, 14, 56, 57.

Essay, Consent of author to publication singly, *S*, 10, 52.

Evidence, Copy of register *prima facie*, *E*, 29.

Strongest, of piracy necessary, *B*, 37.

Plea by defendant and special, in actions for things done under Act—Defendant to have full costs if successful, *S*, 15, 57.

F

Fair quotation, Copyright, *W, X*, 16.

use Quotation beyond, *U—X*, 36, 37.

Foreigner, Acquiring of copyright in British India by foreigner residing abroad *T—W*, 32, 33.

G

Governor General in Council, Power to license re-publication when Copyright proprietor refuses, *S*, 2, 26.

Head-notes, of reports—Copyright, *R, S*, 16.

I

Ideas, No copyright in mere, *B*, 17.

Copyright however in the material that has embodied the, *C—E*, 17.

Imitation, Copy and, distinction between, *B—D*, 42.

Not every, a proof of plagiarism, *F*, 42.

Infringement, of Copyright, see PIRACY.

of, Copyright—Invasion of literary property three-fold, *X—I, Y*, 20.

"Punjab Record"—Urdu translation,—Copyright, *I, J*, 30.

Liability for, of copyright, *S*, 7, 33—49.

Infringement—(Continued).

- In specific meaning, *I—L*, 35.
- Principle of, *M, N*, 35.
- of copyright, *O, P*, 36.
- by indirect copying, *Q—S*, 36.
- "Fair use" Quotation beyond, *U—X*, 36, 37.
- Copyright—Catalogue illustration in—Copyright in portion of publication how far protected—Fraud on the public—Mis-statements—"Puffing" statement, *Y—A*, 37.
- of copyright—No original matter—Strongest evidence of piracy necessary, *B*, 37.
- Proof from common errors, *C*, 37.
- By re-printing the whole *verbatim*—Such piracy seldom committed—Mistaken right of defendant—Importation from abroad, *E, F*, 38.
- By re-printing *verbatim* a part—Nature of such piracy—Criterion—Quantity of matter subtracted, *G*, 38.
- Extent of appropriation, *H, I*, 38.
- Usual defences two, *J*, 38.
- Defence—Quantity by slight test, *K—P*, 39.
- Defence—Character of works to be regarded, *Q*, 40.
- Defence—Common source—Source open to all the world, *R*, 40.
- Defence—Defence raised in cases of compilation, *S*, 40.
- Defence—How far prior literature may be used, *T, U*, 40.
- Defence—Compiling for various objects, *V*, 40.
- Copying general arrangement, *W*, 41.
- A compiler must produce an original result, *X—Z*, 41.
- Copyright infringed by imitation, *A*, 41.
- One-test—Substantial identity, *E*, 42.
- by abridgment, *G—J*, 42, 43.
- Copyright infringed by translation, *L*, 43.
- Translation of protected work a piracy, *M—P*, 43, 44.
- by translation—Principle on which this rests, *Q*, 44.
- of copyright—Translation, *R, S*, 44.
- Exception from, *T, U*, 44.
- Fair use may be a ground for exemption, *V—X*, 44, 45.
- Law digests, *Y*, 45.
- Almanac—Burden of proof—Injunction, *H, I*, 46.
- may be restrained by injunction, *J*, 46.
- Injunction, *K*, 46.
- Profits of, *L*, 46.
- Part clearly infringed, *M*, 47.
- of copyright—Suit for injunction, *N*, 47.
- of jurisdiction in cases of—Copyright—What constitutes, *O*, 47.
- of copyright—Jurisdiction of Small Cause Court—Damages not to exceed Rs. 500, *P—U*, 47, 48.
- Suit for, of copyright—Jurisdiction of Small Cause Court, *V—B*, 48.
- Copyright, of—Jurisdiction—Order for books sent from Bombay to Delhi—Value payable post, *C*, 48, 49.
- at Lahore—Defendant a resident of Lahore—Demand for surrender at Aligarh—Jurisdiction of the Court at Aligarh to entertain suit, *D, E*, 49.
- Notice to be given by defendant to plaintiff in suit for infringing copyright, *S. 8*, 49—51.
- Particulars to be stated in notice when right of plaintiff is denied, *S. 8*, 50, 51.

Infringement—(Concluded).

Notice—Effect of omission, S. 8, 50, 51.

Particulars to be stated in defendant's answer to, S. 9, 51.

Effect of omission, S. 9, 51.

Suit for injunction and damages—Ancient religious works annotated—Copyright, X—Z, 54, 55.

Damages for, B, C, 55.

Injunction, Almanac—Burden of proof, H, I, 48.

Infringement may be restrained by, J, 46.

Infringement, K, 46.

Infringement of copyright—Suit for, N, 47.

Suit for, and damages—Ancient religious works annotated—Copyright—Infringement, X—Z, 54, 55.

Inspection, Registry open to, S. 3, 27—29.

J

Judgment (written), Copyright in, N, O, 15.

Jurisdiction, Act XXV of 1867—Supreme Court of Calcutta, Q—S, 32.

of the High Court of Calcutta—24 and 25 Vic. c. 104, S. 9—Acquiring of copyright in British India by foreigner residing abroad, T—W, 32, 33.

of Small Cause Court—Damages not to exceed Rs. 500—Infringement of Copyright, P—U, 47, 48.

of Small Cause Court—Suit for infringement of Copyright, V—B, 48.

Order for books sent from Bombay to Delhi—Value payable post—Copyright, infringement of, C, 48, 49.

of the Court at Aligarh to entertain suit—Infringement at Lahore—Defendant a resident of Lahore—Demand for surrender at Aligarh, D, E, 49.

L

Licenses, Registry of Copy-right, and, S. 3, 27—29.

Limitation, of criminal proceedings for breach of Act, S. 16, 57, 58.

Literary composition, Copyright in, B—E, 11.

Literary work, Copyright, F—L, 12.

M

Marginal notes, Editor's copyright in, T, 16.

Monopoly, Copyright as, O—V, 19.

N

Newspaper, Property in, D—G, 21—23.

Notice, to be given by defendant to plaintiff in suit for infringing copyright, S. 3, 49—51.

Effect of omission, S. 8, 50, 51.

Particulars to be stated in, when right of plaintiff is denied, S. 8, 50, 51.

O

Original work, defined, L, M, 8, 9.

P

Partners, Registration not containing individual names and addresses of the, in the firm—Effect, V, 54.

Person aggrieved. Proprietor of copyright, O, 31.

Application by, by entry in registry for order to vary or expunge it, S. 6, 31—33.

Piracy, See INFRINGEMENT, Meaning, Y—A, 34.

Test of, *B, C, 34.*

Intention—Test, *D—G, 34, 35.*

Principle by which a, is judged, *H, 35.*

Strongest evidence of, necessary—No original matter, *B, 37.*

Infringement by re-printing the whole *verbatim, E, F, 38.*

Translations of protected work a, *M—P, 43, 44.*

Copyright registered and subsisting, *I, 56.*

Plagiarism, not necessarily an invasion of copyright, *T, 36.*

Not every imitation a proof of, *F, 42.*

Plea, by defendant and special evidence in actions for things done under Act—Defendants to have full costs if successful, *S, 15, 57.*

Practice, Procedure—Registration of copyright—Proprietorship disputed—Notice, *K, 51.*

Preamble, part of statute, *E, 8.*

How far a guide in construction of statutes, *F—T, 5, 6.*

Scope of title and, *U, 6.*

Procedure, Registration of copyright—Proprietorship disputed—Notice—Practice, *K, 51.*

Property, in the title of a book or Newspaper, *D—G, 21, 23.*

Proprietor, may be registered as trustee for another, *X, Y, 28, 29.*

Copyright right to make entries in registry, *S, 5, 30.*

Copyright—Assignment, *K, 30, 31.*

of copyright—Person aggrieved, *O, 31.*

Rights of, or copyright on making entry in registry, *S, 11, 52.*

Right to copyright, to sue for and recover copies or damages, *S, 13, 55.*

Entry in registry to be made before copyright, can proceed under Act, *S, 14, 56.*

Of copyright of books name not registered at the time of proceeding, *N, O, 57.*

Proprietorship, Copyright—Book, *S, 1, 20—26.*

of copies of book illegally printed, *S, 12, 53—55.*

Publication, Meaning, *H—J, 23.*

What constitutes publishing, *K, 24.*

depends on what, *L, 24.*

Privately printed work, *M, 24.*

Sale of one copy, *N, 24.*

Author's right to impose restrictions preventing, *O—Q, 24.*

Story published in parts in magazine, *R, S, 24.*

Artistic work—Exhibition for sale, *T, 25.*

What does not amount to, *U—B, 25.*

The effect of, *O, 25.*

without consent—Unpublished work—Property, *D, 25, 26.*

Consent of author to, singly, *S, 10, 52.*

R

Register, Assignee must, *D, 29.*

Copy of, *prima facie* evidence, *E, 29.*

Registration, under Act XXV of 1867, *N, 27.*

of copyright—Proprietorship disputed—Notice—Practice—Procedure, *K, 51.*

not containing individual names and addresses of the partners in the firm—Effect, *V, 54.*

only a condition precedent to the right to sue, *H, 56.*

Registry, of Copyright, assignments and licenses, *S, 3, 27—29.*

open to inspection, *S, 3, 27—29.*

The Book of—Entry—Effect, *P, Q, 28.*

Registry—(Concluded).

Full name of firm must be set out, *W*, 23.

Sufficient to enter actual proprietor, *A*, *B*, 29.

Correct title must be registered, *C*, 29.

Copyright proprietor's right to make entries in, *S*, 5, 30.

Fee, *S*, 5, 30.

Assignment of Copyright by entry in, *S*, 5, 30.

Application by person aggrieved by entry in, for order to vary or expunge it,
S, 6, 31—33.

Rights of proprietor of Copyright on making entry in, *S*, 11, 32.

not showing assignment by author to publishers the proprietors of a book, *U*, 34.

Entry in, to be made before Copyright proprietor can proceed under Act, *S*, 14,
36.

Reporter, Whether a, is entitled to copyright in his *verbatim* report of a public speech,
N—*R*, 9, 10.

Re-publication, Power to license, when copyright proprietor refuses, *S*, 2, 28.

Review, Copyright in, *S*, 10, 31, 32.

S

Selection of poems, Copy right in, *S*, 34.

Successive issues of, nature of, *T*, 34.

Small Cause Court, Jurisdiction of—Damages not to exceed Rs. 500—Infringement of
Copyright, *P*—*U*, 47, 48.

Jurisdiction of—Suit for infringement of copyright, *V*—*B*, 48.

Stamp duty, Assignment of copyright exempted from, *L*, 31.

Statute 24 and 25 Vic. C. 104, S. 9—Acquiring of copyright in British India by foreigner
residing abroad—Act XXV of 1867, *S*, 18—Expunging entry from the Catalogue
of books kept in Bombay—Jurisdiction of the High Court of Calcutta, *T*—*W*,
32, 33.

Suit, Notice to be given by defendant to plaintiff in, for infringing copyright, *S*, 8, 40
—51.

Particulars to be stated in defendant's answer, *S*, 9, 51.

for injunction and damages—Ancient religious works annotated—Copyright, *X*—
Z, 34, 35.

Summary proceeding, Meaning, *G*, 15.

Proceeding under *S*. 6 of this Act, *P*, 31.

Supreme Court of Calcutta, Act XXV of 1867—Jurisdiction, *Q*—*S*, 32.

T

Title, of a book, *M*—*Q*, 12.

of a book property in the, *D*—*G*, 21—23.

Translation, Copyright, *Y*—*A*, 16, 17, *A*—*G*, 46.

Punjab Record, Urdu—Copyright—Infringement, *I*, *J*, 30.

Copyright infringed by, *L*, 43.

of protected work a piracy, *M*, *P*, 43, 44.

W

Words and phrases, Any person—Meaning, *Z*, 45.

Offer for sale—Expose for sale, *H*—*J*, 50.

THE
INDIAN SECURITIES ACT.

(ACT XIII OF 1886.)

(WITH THE CASE-LAW THEREON)

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THE INDIAN SECURITIES ACT, 1886.

CONTENTS.

SECTIONS.

1. Short title and commencement.
2. Repeal.
3. Definitions.
4. Notice of trust not receivable.
5. Right of survivors of joint payees of Government securities.
6. Prohibition of indorsements on allonges to Government securities.
7. Holding of Government securities by holders for the time being of public offices.
8. Transfer and discharge of certificates and coupons.
9. Indorser of Government security not liable for amount thereof.
10. Impression of signature on Government securities.
11. Issue of renewed securities.
12. Issue of duplicate securities.
13. Period after which the Government is released from liability in respect of original security.
14. Power of Governor General in Council to make rules.
15. Publication of drafts and rules.

THE INDIAN SECURITIES ACT, 1886¹.

(ACT XIII OF 1886.)

[Passed on the 19th March, 1886.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1881	III	Securities	... Rep., Act XIII of 1886.
1885	XIX	Do.	... Do.
1886	XIII	Do.	... Rep., in part, Act XII of 1891.

An Act to consolidate and amend the law relating to Government Securities.

WHEREAS it is expedient to consolidate and amend the law relating to Government securities; It is hereby enacted as follows:—

(Notes).

1.—“The Indian Securities Act, 1886.”

(1) Statement of Objects and Reasons.

For———, see Gazette of India, 1886, Pt. V, p. 49.

A

(2) Report of the Select Committee.

For———, see Gazette of India, 1886, Pt. IV, p. 191.

B

(3) Proceedings in Council.

For———, see Gazette of India, 1886, Supplement, pp. 225, 223 and 669.

C

(4) Act was declared in force.

The ——— in Upper Burma except the Shab States by the Upper Burma Laws Act, 1886 (XX of 1886), and is now in force there under S. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898) by which Act XX of 1886 is repealed.

D

Short title and commencement.

1. (1) This Act may be called the Indian Securities Act, 1886; and

(2) It shall come into force on the first day of April, 1886.

*

*

*

*

*

(Notes).

Legislative Changes.

Sub-sec. (3), which was as follows:—“(3) The power conferred on the Governor General in Council by section 7, sub-section (1), may be exercised at any time after the passing of this Act; but a notification issued in exercise of that power shall not take effect until the Act comes into force,” was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

E

III of 1881.
XIX of 1885.

2. (1) On and from the day on which this Act comes into force, the Indian Securities Act, 1881,¹ and the Indian Securities Act, 1885, shall be repealed.

(2) But any authority conferred, notification issued, list published or rule or order made under either of those Acts shall, so far as may be, be deemed to have been conferred, issued, published or made under this Act.

Definitions.

3. In this Act—

(1) "Government security" ¹ includes promissory notes,² debentures,³ stock-certificates and all other securities issued by the Government of India or by any Local Government in respect of any loan contracted either before or after the passing of this Act, but does not include a stock-note or a currency-note: and

(2) "prescribed" means prescribed by rules made by the Governor General in Council.

(Notes).

1. "Government Security."

- (1) Stamp duty on agreement for sale of Government security.

——— is one anna. See Art. 5 (a), Sch. 1, Stamp Act, 1899.

F

- (2) Transfer of Government security by endorsement.

—— — is exempted from stamp duty. See Exemption (d) to Art. 62, Sch. I, Stamp Act, 1899.

G

2.—"Promissory notes."

- (1) Government promissory notes—S. 13, Act XXVI of 1881—Negotiable instrument.

(a) The Negotiable Instruments Act defines "negotiable instruments" in S. 13 as a Promissory note, bill of exchange, or cheque expressed to be payable to a specified person or his order, or to the order of a specified person or to the bearer thereof." 24 B. 65 (70).

H

(b) (i) Government promissory notes would come within that definition. 24 B. 65 (71).

H-1

(ii) The Negotiable Instruments Act applies to Government promissory notes. 12 C.L.J. 470. See, also, 24 B. 65.

I

(c) Promissory notes issued by and under the authority of the Governor-General in Council of the East India Company, in Bengal, for the purpose of raising money to meet the exigencies of the Government of India, were held to be negotiable instruments. 5 M.I.A. 1.

J

- (2) Government promissory note—Debt

A Government promissory note standing in the name of the widow as the certificated holder of her husband's estate is a debt. 15 C.W.N. 1018.K

3.—"Debentures."

- (1) Debenture—What it is.

A debenture means a document which either creates a debt or acknowledges it, and any document which fulfils either of these conditions is a debenture. *Per Chitty, J., in Levy v. Abercorris Slate Co., (1888) 37 Ch. D. 264.*

L

3.--"Debentures"---(Concluded).

(2) *Ibid.*—Definition.

"I cannot find any precise legal definition of the term; it is not either in law or procedure a strictly technical term, or what is called a term of art." (*Ibid.*)

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

5. (1) Notwithstanding anything in the Indian Contract Act, 1872, section 45, when a Government security is payable to two or more persons jointly and either or any of them dies, the security shall be payable to the survivor or survivors of those persons.

(2) Nothing herein contained shall affect any claim which, the representative of the deceased person may have against the survivor or survivors in respect of the security jointly payable to him or them and the deceased.

(3) This section shall apply whether the death of the person to whom the security was jointly payable occurred or occurs before or after this Act comes into force.

(Notes).

1—"Right of survivors."

Rule of survivorship applies to Government securities.

By this legislation the rule of survivorship is restored for the particular case of Government securities, provision being at the same time made for the protection of the rights of the deceased creditor's representative.

6. Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881, the holder of a Government security shall not be said to indorse the security, or be called the indorser thereof, if when he signs the same for the purpose of negotiation, he inscribes his signature for that purpose elsewhere than on the back of the security itself.

(Notes).

Scope of section—Negotiable Instruments Act applying to Government promissory note.

Looking at S. 6 of this Act it would appear that the Negotiable Instruments Act is intended to apply to Government promissory note. 24 B. 65 (71); see, also, 12 C.L.J. 470.

1.—“*Indorsements on allonges.*”

Indorsement on allonge—Allonge, what is.

S. 15, Act XXVI of 1881 provides that an indorsement may also be written on a separate slip of paper annexed to the instrument. As there is no legal limit to the number of indorsements, it may happen that there may be no room to write them all distinctly on the instrument itself. In such a case, a slip of paper is annexed to the bill or note, upon which the supernumerary indorsements may be written. The slip of paper thus annexed is called an “Allonge.” See 13 B.L.R. 359=22 W.R. 106; Byles on Bills, 17th. Ed., p. 168. P

So an allonge is a slip of paper annexed to a bill upon which, there being no limit to the number of endorsements, when there is not room to write them all distinctly on the back of the bill, the supernumerary endorsements may be written. It is annexed by the holder in order that he may write the endorsement. The term does not apply to a paper annexed by the officers of Government for writing the receipts of interest. (*Ibid.*) Q

* N.B.—An allonge becomes part of the bill or note to which it is annexed and needs no additional stamp. See Byles on Bill, 17th Ed., p. 168. R

7. (1) In the case of any public office¹ to which the Governor-General in Council may, from time to time, by notification in the Gazette of India, declare this sub-section to apply, a Government security may be made or indorsed payable to or to the order of the holder for the time being of

Holding of Government securities by holders for the time being of public offices.

the office by the name of the office.

(2) When a Government security is made or indorsed as aforesaid, it shall be deemed to be transferred without any or further indorsement from each holder for the time being of the office to the succeeding holder for the time being of the office, on and from the date on which the latter takes charge of the office.

(3) When the holder for the time being of the office indorses to a third party a Government security made or indorsed as aforesaid, he shall subscribe the indorsement with his name and the name of the office.

(4) A writing on a Government security now or heretofore standing in the name of the holder of a public office whereby the security has been or was made or indorsed payable to or to the order of the holder of the office for the time being, shall not be deemed to be or to have been invalid by reason only of the payee or indorsee being the holder for the time being of a public office by the name of the office.

(5) The section applies as well to an office of which there are two or more joint holders as to an office of which there is a single holder.

(Notes).

1.—“Public Office.”

(1) Application of S. 7 (1) of the Act to certain offices.

Sub-section (1) has been declared applicable to the offices of—

(a) Managers of State Railways	...	See Gazette of India, 1886, Pt. I, p. 345.
(b) Commanding Officers of Regiments	...	Do. p. 382.
(c) Chairman, Town Council, Bombay and Municipal Commissioner, Bombay	Do.	p. 422.
(d) Chairman, Harbour Trust Board, Madras	Do.	1887, p. 186.
(e) Registrar of any Presidency Small Cause Court	Do.	1889, p. 346.
(f) Assistant Commissioners of Salt and Abkari Revenue, Madras	Do.	1890, p. 613.
(g) Consulting Architect to Government, Madras	Do.	1891, p. 465.
(h) Administrative Medical Officer, North-West Frontier Province	Do.	1902, p. 289.
(i) Office of Comptroller and Auditor General	...	
„ Accountants-General	...	
„ Comptroller	...	
„ Comptroller of Military Accounts	...	
„ Accountant-General, Military Department	...	
„ Accountant-General, Public Works Department.	...	
„ Examiners of Public Works Accounts	...	
„ Examiner of Military Works Accounts	...	
„ Examiner of Telegraph Accounts	...	
„ Secretaries to the Government of India	Do.	1886, p. 270.
„ Secretaries to Local Governments and Administrations	...	
„ Secretaries to Board of Revenue	...	
„ Commissioners	...	
„ Collectors, Magistrates, Judges	...	
„ Deputy Commissioners	...	
„ Treasury Officers	...	
„ Directors of Public Instruction	...	
„ Inspectors of Schools	...	
„ Inspectors-General of Jails	...	
„ Inspectors-General of Registration	...	

I.—“ **Public Office.** ”—(Concluded).

„	Inspectors-General of Police	...	} See Gazette of India, 1886, Pt. I, p. 270.	
„	Deputy and Assistant Inspectors-General of Police	...		
„	District Superintendents of Police			
„	Political Residents			
„	Political Agents		Do.	1903, p. 852.
„	Director General, Supply and Transport	...		
„	Inspector General, Supply and Transport	...		
„	Executive Supply and Transport Officers	...		
„	Superintending Engineers	...	Do.	1886, p. 270.
„	Executive Engineers	...		
„	Masters of the Mint	...		
„	Director-General of Post Office	...		
„	Post Masters General and Deputy Post Masters General	...		
„	Director General of Telegraphs	...	Do.	p. 887.
„	Administrator-General, Bengal	...		
„	Official Assignee, Bengal			
„	Official Trustee, Bengal			
„	Administrator-General, Madras	...		
„	Official Assignee, Madras			
„	Official Trustee, Madras			
„	Administrator-General, Bombay	...	Do.	1908, p. 477.
„	Official Assignee, Bombay	...		
„	Official Trustee, Bombay	...		
(j)	Secretary, Railway Board	...		
(k)	Deputy Comptroller, Military Accounts	...	Do.	„ „ p. 648.

N.B.—See also the list of Local Rules and Orders published by the several Local Governments.

(2) **Public Debt branch of Bank of Bengal, a Government office.**

The Public Debt branch of the Bank of Bengal is as much a Government Office as it was under the separate management of direct Government officer; so that the Bank cannot, in its private capacity, take out of the hands of the Public Debt Office a stolen Government prom-note detained by the Superintendent of the Public Debt office and held by him as agent of the Government. 5 C. 654=5 C.L.R. 586. T

8. (1) Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of the loan, the title to the certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer.

(2) On payment, by or on behalf of the Government, to the bearer of the certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if the certificate or coupon were a promissory note payable to bearer.

(Notes).

1—"Transfer."

Sale of shares for future delivery—Readiness—Willingness.

In a suit to recover damages for the non-acceptance of shares, where the vendor had contracted to execute proper transfers and do all other things necessary on his part to transfer the shares, and to bear the expense of such transfer. *Held*, on the issue whether the plaintiff was ready and willing to perform his part of the contract, that it was sufficient to show that he had in his possession at the time fixed for the performance of the contract on his part such certificates of the share contracted to be sold as were required by the law, and that he tendered the same with a deed of transfer to the purchaser, to effect the transfer; but that it was the duty of the purchaser himself, in such case, having accepted the shares, to have the transfer made into his name in the books of the company. 3 B.H.C.R.O.C. 69. **U**

Held that a contract to deliver shares in a public company is sufficiently performed when the vendor places the vendee in such a position as enables him to become the legal owner of them. *Ibid*. **Y**

Indorser of Government security not liable for amount thereof.

9. A person shall not, by reason only of his having indorsed a Government security, be liable to pay any money due, either as principal or as interest, thereunder.

10. (1) The signature of the officer of the Government of India authorized to sign Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on the securities.

(2) A signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if it had been inscribed in the proper handwriting of the officer.

11. A person claiming to be entitled to a Government security as payable to him under an indorsement may, on satisfying the prescribed officer of the justice of his claim and paying the prescribed fee and delivering the security duly receipted to the prescribed officer, obtain from the officer a renewed security issued payable to himself.

Issue of renewed securities (1).

(Notes).

1.—“ Issue of renewed securities.”

Government Promissory note—Renewal.

(a) The holder of a Government promissory note cannot arbitrarily ask the Government to have the note renewed; but when the back of the note has become covered with endorsements on the receipt of interest, so that there is no room to write an endorsement of the note distinctly on the back of it, the holder is entitled to have it renewed. He cannot claim such renewal if, by the renewal, an order of Court restraining him from parting with the note would be disobeyed. 13 B.L.R. 359=22 W.R. 106 W

(b) The renewal of Government securities (including Government promissory notes) is now governed by the provisions of the Indian Securities Act (XIII of 1886), s. 11, and the rules of the Governor General in Council made under s. 14 of that Act. (*Ibid*). X'

12. (1) When a Government security is alleged to have been wholly or partly lost or destroyed, and a person claims to be the person to whom but for the loss or destruction it would be payable, he may, on application to the prescribed officer, and on producing proof to his satisfaction of the loss or destruction and of the justice of the claim, obtain from him an order for—

Issue of duplicate securities. (1)

(a) the payment of interest in respect of the security said to be lost or destroyed pending the issue of a duplicate security; and

(b) the issue of a duplicate security payable to the applicant.

(2) An order shall not be passed under sub-section (1) until after the issue of the prescribed notification of the loss or destruction and after the expiration of the prescribed period, nor until the applicant has given the prescribed indemnity against the claims of all persons deriving title under the security lost or destroyed.

(3) A list of the securities in respect of which an order is passed under sub-section (1) shall be published in the Gazette of India at such times as the Governor General in Council may, from time to time, direct.

(Notes).

1.—“ Issue of duplicate securities.”

Security (lost or stolen)—Agreement by both parties to obtain duplicate—Laches of borrower.

Plaintiff's relative borrowed money from defendant on the security of a Government Promissory Note which was stolen from defendant in 1865, and defendant advertised the loss. In 1865, an ekra was executed between the parties, whereby defendant was bound to take steps, assisted by plaintiff, to procure a duplicate. The note was endorsed, not in defendant's but in plaintiff's name, and no steps whatever were taken by plaintiff until 1869, when the note turned up in the Currency Office. Defendant being unable therefore to perform his part of the contract: Held that any neglect that had taken place in obtaining a duplicate was entirely owing to plaintiff's laches. 18 W.R. 58. Y

13. When a renewed security has been issued under section 11, or a duplicate security has been issued under section 12, the Government shall be discharged from all liability in respect of the original security of which the renewed or duplicate security has been issued—

Period after which the Government is released from liability in respect of original security.

- (a) in the case of a renewed security, after the lapse of six years from the date of the issue of the renewed security ;
- (b) in the case of a duplicate security after the lapse of six years from the date of the publication under section 12, sub-sec. (3), of the list in which the security is first mentioned, or from the date of the last payment of interest on the original security, whichever date is the later.

Power of Governor General in Council to make rules. (1)

14. The Governor General in Council may, from time to time, make rules to prescribe—

- (a) the mode in which payment of interest in respect of Government securities is to be recorded and acknowledged ;
- (b) the circumstances in which Government securities must be renewed before further payment of interest thereon can be claimed ;
- (c) the fees to be paid in respect of applications under sections 11 and 12 ;
- (d) the form in which securities delivered for renewal are to be receipted ;
- (e) the officer who is to exercise all or any of the powers and perform all or any of the duties prescribed by sections 11 and 12 ;

- (f) the proof which is to be produced by persons applying for duplicate securities ;
- (g) the form and mode of publication of the notification mentioned in section 12, and the period after which interest may be paid or a duplicate security may be issued under that section ;
- (h) the nature and amount of the indemnity to be given by a person applying under section 12 for the payment of interest or the issue of a duplicate security ; and,
- (i) generally, all matters connected with the grant of renewed and duplicate securities.

(Notes).

1.—“ Power of.....Rules.”

Rules under section 14 of the Act.

No. 96, dated the 7th January, 1888—Resolution—In accordance with the provisions of the Indian Securities Act, XIII of 1886, the Governor General in Council is pleased to make the following rules under section 14 of the Act :—

1. Interest cages showing the several half-years at which interest will accrue, shall be imprinted on the reverse of each new note issued, and payment shall be recorded by the stamp of the Disbursing Office or by a manuscript entry over the space apportioned to the half-year concerned. If payment be made at a Presidency-town, the recording entry shall show the Presidency and the date and number of the issuing warrant, which shall be in the form of a negotiable instrument payable to the holder's order. But if payment be made at a District Treasury, the recording entry shall show the name of the Treasury, the number borne by the payment voucher, and the date of payment ; this entry shall be authenticated by the initials of the Treasury Officer, and the holder's receipt shall be taken on the face of the payment voucher. If, however, the note be of the old form, and bear no interest cage, the holder's endorsement for interest will be required on the note itself, and payments will be authenticated by the Disbursing Officer under the endorsement as heretofore.

2. Under the preceding rule, interest cages shall be imprinted and (in the case of notes in the old form) holder's endorsements for interest shall be written only on the back of the note itself.

3. If the note be of the old form and bear no interest cage, the holder's endorsement for interest should agree letter for letter with the name in the body of the note or in the transferring endorsement, as the case may be ; the usual signature may be added below.

4. An endorsement or receipt by a native female must be attested by the signatures of at least two respectable witnesses, who must attend before the Officer in charge of the Treasury where interest is payable, and certify to the genuineness of the endorsement or receipt.

(Provided that in the case of receipts for payment of interest on, Government Promissory Notes made at a Presidency Bank, the provisions of sub-rules (2) and (3) shall not be enforced unless it is specially so directed by the officer making the payment).

N.B. :—This proviso was added by Notification No. 1279-A., dated the 1st March, 1906, see Gazette of India, 1906, Pt. 1, p. 146.

I.—“Power of.....Rules ”—(Continued).

5. No notice will be taken of any trust appearing in an endorsement of transfer or receipt for interest.* When a note is endorsed to, or receipted by any person in his capacity of trustee or in any other representative capacity, such person will be treated in all respects as the true owner of the note.

N.B.—Rule 5 was substituted by Resolution No. 3558-A., dated 19th August 1896, see Gazette of India, 1896, Pt. 1, p. 628.

6. A note blank endorsed by the holder is not receivable at any Government Treasury or at the Public Debt Offices in the Presidency-towns. The holder of any such security will therefore be required to specially endorse the same before submitting it for payment of interest.

7. The holder of a note may be required to receipt the same for renewal in all or any of the following cases, that is to say:—

(1) If the note has been enfaced for payment of interest at a Mofussil Treasury, and the holder thereof is desirous of altering the place of payment.

(2) If only sufficient room remains on the back of the note for one further endorsement, or when any word or words is or are written upon the note across any existing endorsement or endorsements, all cross endorsements being strictly prohibited.

(3) If the note is torn or in any way damaged or crowded with writing or unfit, in the opinion of the officer before whom it is produced for payment of interest, for receiving interest.

(4) If the note bears an endorsement which transfers the note to or is signed by, any person otherwise than in his personal capacity, except in the undermentioned cases:

(a) Where the transferee is a well-known firm, corporate body or Bank; or the signature attached to the endorsement is the usual name or signature of such a firm or purports to be the impression of the common seal of a corporate body with perpetual succession or is the signature of the Secretary, Deputy Secretary, Manager or Agent, of a Bank or corporate body;

(b) Where an endorsement is made in his official capacity by the person holding for the time being one of the offices to which the Governor General in Council has, by notification in the Gazette of India, declared section 7, sub-section (1), of the Indian Securities Act (XIII of 1886) to apply;

(c) Where the transfer is made to or by a person in whose favour a certificate under the Succession Certificate Act (VII of 1889) or probate or letters of administration under the Indian Succession Act (X of 1865), or the Probate and Administration Act (V of 1881) has or have been granted by a Court of competent jurisdiction;

(d) Where the transfer is made to or by the executor or administrator of an estate who is described as such therein, such executor or administrator being shown to be the holder according to the tenor of the note and previous endorsements;

(5) If the endorsement is not clear and distinct, or if it is made on paper affixed to a Government Promissory Note.

(6) If, in the opinion of the officer before whom the note is presented for payment of interest, the title of the person so presenting the note is irregular or not fully proved.

(7) If the note in question, being a counterpart note issued under the provisions of Rule 8, has ceased to be the property of a minor or to belong to an estate in which administration is limited to interest.

1. — "Power of.....Rules"—(Continued).

In all or any of the preceding cases payment of any further interest on such note may be refused until the note is receipted for renewal and actually renewed.

N. B.—Rule 7 was substituted by Resolution No. 3558—A., dated 19th August 1896, see Gazette of India 1896, Pt. 1, p. 628.

8. In the case of any note which is the property of a minor or belongs to an estate in which administration is limited to interest, the Public Debt Office at Calcutta may, upon such note being deposited with them, issue to the holder of such note a counterpart thereof having the words "counterpart not negotiable" stamped across the face thereof, and further payments of interest may be recorded upon such counterpart. Whenever such note shall cease to be the property of a minor, or shall cease to belong to an estate in which administration is limited to interest, the further payment of interest in respect of the note may be refused, until the first or any subsequent counterpart, as the case may be, issued in respect of it has been receipted and renewed in the manner provided in the last preceding rule. Upon such counterpart being receipted and renewed as aforesaid, the same, together with the original note and any preceding counterpart issued in respect thereof, will be cancelled.

9. No payment of interest and no record or acknowledgment of the payment of interest and no issue of a counterpart note under the preceding rules is to be deemed or taken to be an acknowledgment of the title of the holder of any note.

10. The following fees are payable in respect of applications under Ss. 11 and 12 of the *Indian Securities Act (XIII of 1886)*.

For each renewed or duplicate security 4 annas per cent., if the new note does not exceed Rs. 400 and Re. 1 if the new note exceed that sum.

N.B.—The words in italics in this rule were substituted by Resolution No. 3559-A, dated the 19th August, 1896, see Gazette of India, 1896, Pt. 1, p. 628.

11. *A note tendered for renewal must be receipted on the reverse as follows:—Received in lieu hereof, a renewed note payable to (name of holder) with interest payable at*

Holder.

Signature of the.....

*Duly authorised representative
of (name of holder).*

N.B.—This was substituted by Notification No. 6223-A, dated 3rd October, 1904, see Gazette of India, 1904, Pt. 1, p. 718.

12. *If a person tendering a note for renewal applies for more than one note in lieu of the note tendered, the latter must be receipted on the reverse as follows, or in a form as near thereto as circumstances will admit:*

Received in lieu hereof, two (or more) notes for Rupees.....respectively, payable to (name of holder), with interest payable at.....

Holder.

Signature of the.....

*Duly authorised representative
of (name of holder).*

N.B.—This was substituted by Notification No. 6223-A, dated 3rd October, 1904, see Gazette of India, 1904, Pt. 1, p. 748.

13. *If a person tendering more than one note for renewal applies for one consolidated note in lieu of the notes tendered, the latter must be receipted as follows, or in a form as near thereto as circumstances will admit:*

I.—“Power of.....Rules ”—(Continued).

Received in lieu hereof, a new note payable to (name of holder) for Rs....., by consolidation with Promissory Note or Notes Nos.....(mentioning the numbers and amounts of the other notes desired to be consolidated with it) with interest payable at.....

Holder.

Signature of the.....

Duly authorised representative

of (name of holder).

N.B.—This was substituted by Notification No. 6223-A., dated 3rd October, 1904, see Gazette of India, 1904, Pt. 1, p. 748.

14. The form of receipt mentioned in the foregoing rules must be very clearly and correctly written, and there must be no ambiguity as to the name of the payee of the new note. The name of the holder, assigned by him or as entered by the duly authorised representative below his own signature, should agree letter for letter with the name in the body of the note or in the transferring endorsement as the case may be. Where the holder himself signs the receipt he may add his usual signature below.

N.B.—This was substituted by Notification No. 6223-A., dated the 3rd October, 1904, see Gazette of India, 1904, Pt. 1, p. 748.

15. The holder of any note requiring renewal may procure a renewed note in lieu of his original security in any of the following ways; that is to say, he may present it duly receipted either in person or through a representative at—(1) Public Debt Office, Bank of Bengal, Calcutta; or (2) at a Government Treasury for transmission to that office; or (3) at the Banks of Madras and Bombay who as agents of the said Bank of Bengal may either renew such notes on their own responsibility or may forward them to the said Public Debt Office, Bank of Bengal for renewal. In the case of notes presented direct to the said Public Debt Office, Bank of Bengal, or transmitted to it for renewal either through a Government Treasury or the Bank of Madras or of Bombay, the prescribed officer referred to in S. 11 of the Indian Securities Act (XIII of 1886) shall be the Secretary, Bank of Bengal, for the time being; and in the case of notes presented for renewal at the Bank of Madras, or of Bombay and renewed by those Banks on their own responsibility such officer shall be the Secretary of the Bank of Madras or of the Bank of Bombay for the time being as the case may be.

N.B.—The words in italics in this Rule were substituted by Resolution No.

3558-A, dated 19th August, 1896, see Gazette of India, 1896, Pt. 1, p. 628

16. The officer referred to in S. 12, sub-section (1) of *The Indian Securities Act (XIII of 1886)* shall be the Comptroller-General for the time being.

N.B.—The words in italics in this rule were substituted by Resolution No.

3558-A, dated 19th August, 1896, see Gazette of India, 1896, Pt. 1, p. 628.

• 17. The loss or destruction of a Promissory Note shall be notified in the first instance by letter addressed to the Bank of Bengal, Public Debt Office, Calcutta; such letter shall contain the following particulars:—

(1) Particulars of the note according to the following form:—

Promissory Note for Rs. , No. , of the per cent. loan of

(2) Last half-year for which interest has been paid.

(3) To whom paid.

(4) Name of the person in whose name the note was issued (if known).

I.—“Power of.....Rules ”—(Continued).

- (5) Particulars of coupons attached (if any).
- (6) Where enfaced at present.
- (7) The circumstances attending the loss.
- (8) Whether the loss was reported to the Police.

The above letter shall be accompanied by—

- (a) The Post Office Registry receipt for the letter, containing the note, if the same was lost in transmission by post.
- (b) The Police report, if any can be obtained.
- (c) A letter signed by the Officers of the Treasury or Presidency Bank where interest was last paid, certifying the last payment of interest made on the note, and to whom, if interest was paid out of Calcutta.
- (d) If the applicant is not the last registered holder, all documentary evidence necessary to trace back the title to the last registered holder.
- (e) Any portions or fragment which may remain of the lost or destroyed note.

A duplicate of the letter to the Public Debt Office, Calcutta, must also be sent to the Treasury where interest is payable.

18. The loss or destruction of a Promissory Note shall be further notified by an advertisement, which the applicant for a duplicate note shall cause to be inserted in three successive issues of the Gazette of India and of the Local Government Gazette of the place where the loss or destruction occurred. Such Notification shall be in the form following, or as near thereto as the circumstances will admit : —

Lost or destroyed (as the case may be.)

The Government Promissory Note No. _____, of the _____, per cent. loan of _____ for Rs. _____, originally standing in the name of _____, and last endorsed to _____, the proprietor by whom it was never endorsed to any other person, having been lost or destroyed, notice is hereby given that payment of the above note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, Calcutta, and that application is about to be made for the issue of a duplicate in favour of the proprietor. The Public are cautioned against purchasing or otherwise dealing with the above-mentioned security.

* Name of the Advertiser.....

Residence.....

19. At the expiration of six months from the date of the insertion of the last advertisement, the Comptroller General shall, if satisfied of the loss or destruction of a portion of a note, and of the justice of the claim of the applicant, and, if a sufficient portion for the identification of the note so lost or destroyed shall have been produced, direct the Public Debt Office, upon the execution of such bond of indemnity as is hereinafter mentioned, to issue to the applicant a duplicate note in lieu of that so lost or destroyed as aforesaid. If, however, no portion or no sufficient portion of the note so lost or destroyed shall have been produced as aforesaid, then, at the expiration of two years from the date of the insertion of such last advertisement, the Comptroller-General shall, if satisfied as aforesaid, pass an order directing the Public Debt Office, upon the execution of such bond of indemnity as is hereinafter mentioned, to pay the applicant interest in respect of the note so lost or destroyed pending the issue of a duplicate note, and also directing the said Public Debt Office, at the expiration of six years from the date of the publication of the list in which the lost or destroyed security is first mentioned, if no reason to the contrary appear, to issue to the applicant (on his executing and procuring the execution by two sureties of such indemnity bond as is hereinafter mentioned should the same be deemed necessary by the Comptroller-General) a duplicate note in lieu of that so lost or destroyed as aforesaid.

I.—“Power of.... Rules”—(Continued).

20. The Comptroller-General may, within six years of the date of an order passed by him under rule 19, if he finds sufficient reason, alter or cancel such order, and may also require that the interval before the issue of a duplicate note be extended to twelve years, or such shorter period not being less than six years, as he may think fit.

21. Indemnity bonds when taken on the issue of a duplicate note or notes shall be for twice the amount of such note or notes, and when taken on the issue of orders for payment of interest shall be for twice the amount of the interest involved, that is to say, twice the aggregate amount of all back interest accrued due on the note, *plus* twice the amount of all interest to accrue due thereon during the six years which will have to elapse before the issue of a duplicate note can be made. In simple cases such bonds may be issued by the Comptroller-General at Calcutta in a printed form prescribed by Government. No fee will be chargeable if a bond does not exceed in amount Rs. 500; but on bonds for higher amounts a fee of Rs. 5 for every Rs. 1,000, or part of Rs. 1,000 will be charged provided that no fee for any one bond so issued shall exceed in amount Rs. 30. If, however, the Comptroller-General consider that the circumstances of the case demand that a bond shall be specially prepared by the Government Solicitor, a fee of Rs. 32 shall be payable to that officer.

22. The list of securities lost or destroyed referred to in section 12 (3) of the *Indian Securities Act, XIII of 1886* in respect of which an order is made for payment of interest pending the issue of a duplicate security, or for the issue of such duplicate security, shall be advertised half-yearly in the *Gazette of India* in the months of January and July or as soon afterwards as may be convenient. All securities in respect of which an order has been passed as aforesaid shall be included in the first list published next after the passing of such order and shall continue advertised every half-year until the expiration of six years from the date of first publication, or from the date of the last payment of interest on the original securities, whichever is the later date. Such list shall contain the following particulars, *viz.*, the name of the loan and number of the last note, its value, in whose name it was issued, from what date it bears interest, the name of the claimant for a duplicate, the number and date of the order passed by the Comptroller-General for payment of interest, or issue of a duplicate, and the date of publication of the list in which such security was first mentioned.

N.B.—The words in *Italics* in this rule were substituted by Resolution No. 3558-A, dated the 19th August, 1896, see *Gazette of India*, 1896, Pt. I, p. 628. [See *Gazette of India*, Pt. I, p. 6.]

RULES AS TO SECURITIES DEPOSITED WITH GOVERNMENT
FOR COMPLETION OF CONTRACTS.

Resolution No. 1012, dated 28th February, 1890.—The object of the proposal now made is to provide that, in the case of Government securities received by Warrant Officers in charge of depots the securities shall not be endorsed to such officers but to the nearest Ordinance Officer.

2. It is understood that the difficulty occasioned by the existing rules arises almost entirely in connection with deposits made for short periods by contractors as a guarantee for fulfilment of their contract. The simplest way to overcome the difficulty appears to be to rule that such deposits as also other deposits of Government securities which are not expected to remain in custody for more than a year, may remain in the name of the person making the deposit and not be endorsed to any officer of Government. The deposits will then be received on the condition to be stated in the tender or otherwise, that Government will be authorised to appropriate and cancel the notes if the contracts are not fulfilled. If by mistake notes sent by depositors to an officer of

I.—“Power of . . . Rules”—(Concluded).

Government are endorsed to him, they should be returned, when the proper time comes with that endorsement cancelled, instead of being re-endorsed. In this case interest should not be drawn by the officer but if the notes remain in the name of the depositor there would be no objection to his drawing interest on them on producing at the treasury in which they are lodged for safe custody a receipt countersigned by the Government Officer who lodged them provided, of course, that the notes are enfaced for payment of interest at that treasury.

3. His Excellency the Governor-General in Council accordingly directs that in future the procedure in such cases shall be as follows :—

(1) When the notes are deposited for a period of twelve months or less, they shall remain in the name of the depositor and *shall not be* endorsed by him to any officer of Government.

(2) The Government officer receiving the deposit will see that the notes stand in the name of the depositor, and that the contract or other document executed by the depositor conveys authority to Government to appropriate or cancel the notes if the contract is not fulfilled.

(3) After satisfying himself on these points, the Government Officer receiving the deposit will lodge the note or notes for the safe custody in the nearest civil treasury except in the Presidency towns of Calcutta, Madras and Bombay where the notes will be lodged with the Comptroller-General and with the Accountant-General, Madras, and Bombay, respectively. The Comptroller-General will issue subsidiary rules regulating the procedure at the treasuries.

(4) The depositor may draw interest on these notes by tendering receipts in the usual form countersigned by the officer with whom he deposited them.

(5) When the notes are deposited for more than twelve months, they should be endorsed to the Comptroller-General (or Accountant-General, Madras and Bombay, as the case may be) and sent as at present through the Comptroller of Military Accounts, the practice now followed of sending to the Presidency Bank notes deposited for more than six and less than twelve months being discontinued.

15. (1). The Governor-General in Council shall, before making rules under section 14, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of the public.

(2) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(3) The Governor-General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(4) Every rule made under section 14 shall be published in the Gazette of India, and the publication in that Gazette of a rule purporting to be made under that section shall be conclusive proof that it has been duly made.

APPENDIX.

The following cases, though not falling under any particular sections of this Act, are collected here for facility of reference because they relate to Government Promissory Notes and Government Securities.

I.—Government Promissory Notes.

(1) Government Promissory Notes—Bank of Bengal—C.P.C. 1882, S. 268—Attachment.

Where certain Government Promissory Notes in the custody of the Bank of Bengal were declared to belong to the plaintiff, and the plaintiff applied for execution of the decree by attachment, S. 268, C.P.C., 1882, was held to be applicable only to cases where the property, in the possession of a third party, belonged to the judgment-debtor, and not to cases where it was declared to be plaintiff's. 1 C.W.N. 170. **A**

(2) *Ibid.*—Transfer of—Indorsement—Onus.

(a) Government promissory notes are negotiable instruments within the meaning of Act XXVI of 1881. They can be transferred only by indorsement on the back of the note. An indorsement on the face of the note or on an allonge is invalid. These notes cannot be assigned without indorsement as ordinary choses in action. 24 B. 65 (71) *Cf.* 5 B. 268. **A-1**

(b) "The indorsement through which a holder in due course claims must be genuine. This principle is of universal application." 24 B. 65 (72). **B**

(c) The onus is in the first place on the transferor of a Government security to establish that the transfer of the Promissory Note by him in favour of another was without consideration. 12 C.L.J. 470. **C**

(d) Oral evidence is admissible to show that an agreement in writing to sell Government pro-notes is really an agreement made by way of wager on its market price on a future day. 17 M. 480 [12 B. 585, *P.*; 9 C. 791, *Diss.*] (*F.* U.B.R. 1897-1901, Vol. II, 399; 85 P.R. 1898); (*Appr.*, 32 C. 437. **F.B.**) (*Affir.*, 18 M. 306 (**F.B.**)). **D**

(3) *Ibid.*—Transfer of—Notice.

If any person has a right to prevent the legal holder of a Government promissory note parting with it, that person ought to take proper legal proceedings to obtain an order of Court restraining her from doing so. If such an order be obtained and the Government has notice of it, it would be bound to act in accordance with it. 13 B.L.R. 359—22 W.R. 106. **E**

(4) *Ibid.*—Transfer when can be impeached.

When Government pro-notes are transferred in market over for full value, the original owner wishing to cancel the transfer must prove fraud or insufficient endorsement. Old S.C. 7, Oudh. **F**

(5) *Ibid.*—Transfer of interest in—Negotiable Instruments Act (XXVI of 1881), Ss. 14, 46 and 48.

In June 1903 the plaintiff endorsed some Government Promissory Notes of the value of Rs. 20,000 to the Secretary of State for India as security for one B, a Government treasurer. In August 1903 he presented an application to the Deputy Commissioner in which he stated that he had sold the notes to S, that he would endorse the notes to S when required to do so, that S had purchased the notes subject to the

I.—Government Promissory Notes—(Continued).

Secretary of State's lien, etc. On the following day S presented a corresponding petition to the Deputy Commissioner in which he stated that he had purchased the notes and had a lien on them subject to the Secretary of State's claim. About the same time the plaintiff by a letter requested S to discount certain hundis in the name of certain firms and S discounted some of them to the extent of Rs. 9,000. Subsequently the plaintiff brought a suit for a declaration that the notes were not liable to attachment in execution of the decrees of the first defendant, Allahabad Bank, against the defendant S. *Held*, that the interest of the plaintiff in the notes was transferred to S, that the transfer was purely of a chose in action to which the Negotiable Instruments Act did not apply, and that the plaintiff's suit was not maintainable. 9 O.C. 174. G

(6) *Ibid.*—Endorsement and delivery of, by Muhammadan father to son, effect of—Evidence of conduct of parties.

- ° Certain Government promissory notes had been transferred to the defendant by his father, and the question arose in this suit for partition brought against him by his sister, whether the transaction was intended to be a transfer of the true ownership of the promissory notes or was a merely benami transaction leaving the true ownership of the notes in the father himself, in other words whether the promissory notes and the cash representing them continued to be part of the estate of the father at his death, or, by reason of their having been given by him while living to his son, belonged to the latter. Though some of the facts subsequent to the endorsement told against the defendant, the first Court was of opinion that such facts admitted of explanation on the theory that the father while giving away the notes, reserved to himself the right of using the interest during his lifetime and of charging the income with certain bequests to be paid after his death. The High Court came to a different conclusion, pointing out that the explanation suggested by the first Court was a mere theory without evidence and their Lordships of the Privy Council, agreeing with the High Court, decided that the conduct of the parties in the case subsequent to the endorsement of the note by the father removed every doubt which might otherwise have affected that transaction, and left it certain that the ownership of the notes remained in the father. (*It.*, 27 B. 31=4 Bom. L.R. 754). 19 A. 267 (P.C.)=24 I.A.1. H

(7) *Ibid.*—Gift of property intended to be made by father to daughter—Gift not completed—Transfer whether valid as declaration of trust—Nature of evidence required to establish trust.

- Plaintiff, the daughter of one K, sued the defendants, his grandsons, for the delivery up of a Government promissory note on the ground that, although purchased by her father in his name, it had been set apart by him as a provision for her. Plaintiff stated that although there was no complete transfer to her of the legal ownership in the note, the father having constituted himself a trustee of the note for the benefit of the plaintiff, the Court should enforce the trust as such, although a voluntary one. *Held* that the doctrine, obtaining in the Courts of Equity in England, of the transfer of ownership by acknowledgment of a trust, requires to be cautiously applied in the Courts

I.—Government Promissory Notes—(Continued).

in India, especially when it is sought to be established by oral evidence. The evidence in the case was of an unsatisfactory nature owing to discrepancies in it and its uncertain character. The evidence left no doubt as to the intention of the father to give the note to the daughter, but was not of such a character as to justify the conclusion that the father had constituted himself a trustee for the daughter before he died. The conclusion arrived at by the Court on the evidence was that the father failed to carry out his intention into effect by some instruments declaring distinctly the manner in which the note was to be appropriated to the benefit of his daughter, the plaintiff, whose suit was, therefore, dismissed by the Courts but without costs. 7 B. 229. (*R.*, 17 B. 486; 10 Bom. L.R. 1209). I

(8) *Ibid.*—Gift of Government Notes—Necessity of endorsement to complete gift—Creation of trust by donor constituting himself trustee—Enforceability of trust against representative of donor—Practice among Parsis.

A gift of Government stock cannot be completed without an endorsement or something equivalent to it; for where a particular form of transfer is prescribed by law, a transfer in another form is as inefficacious *inter vivos* as in a Will. And, to such a unilateral transaction, in a case where it is gratuitous, completion cannot be given by the Courts, as where a consideration has been paid and the contract must be enforced in order to prevent fraud. But an owner of such notes may constitute himself a trustee of such notes for another, which trust may then be enforced against him or his representative. It is not even necessary that he must expressly constitute himself as such trustee, and from the practice obtaining in his community. In the present case a Parsi woman sued her mother-in-law for the recovery of the value of certain Government Notes and interest due thereon, alleged to have been presented to the plaintiff at the time of her marriage for her sole and separate use. It was found in evidence, that the marriage of the plaintiff was in 1851; that from certain accounts opened in the books of a firm of which the plaintiff's grandfather was a partner, it was clear that some presents were made to the plaintiff by her father-in-law; that there was an entry in that account dated August 1854, to the effect that the father-in-law of the plaintiff had bought two Government Notes for Rs. 1,500 in his daughter-in-law's (the plaintiff's) name and had obtained the interest on them, which was duly credited to her; and there were documents in the handwriting of the father-in-law and the grand-father of the plaintiff, wherein the said Notes were alluded to as the property of the plaintiff and as having been purchased with her moneys, and that in 1864 the father-in-law died without having endorsed the notes over to the plaintiff or to any one on her behalf, and that they remained in his name in the hands of the grandfather till 1896 when the defendant got possession of the same. It was held under the circumstances that, although there was no valid gift of the notes, there was a clear indication that the father-in-law held the notes only as trustee for the plaintiff, and that the defendant, as the executrix and representative of the plaintiff's father-in-law, was bound by that trust. 5 B. 268. (*R.*, 10 Bom. L. R. 1209). J

I.—Government Promissory Notes—(Concluded).

- (9) *Ibid.*—Authority to negotiate—Hindu widow—Act XXVII of 1860—Certificate—Debts due to son—Proof of possession of the notes.

A Hindoo widow holding a certificate for the collection of debts due to her son, and applying for authority to negotiate certain Government Promissory Notes, the interest of which the son had been permitted to draw, but which stood in the name of her late husband, is bound to show how she got possession of them. 15 W.R. 267. **K**

- (10) *Ibid.*—Deposit of stolen, as security—Detention by Public Debt Office—Claim to return note upon suit for recovery of debt.

Where a Government Pro-note, stolen while in the custody of the Public Debt Office, had been deposited with the Bank of Bengal by the defendant, a purchaser for full value, as security for loan upon a promissory note and was detained by the Superintendent of the Public Debt Office on its being sent there by the Bank, at the defendant's request, for payment of interest, *held* that, in a suit upon the pro-note for the recovery of the amount of the loan, the defendant was not entitled to refuse payment till the stolen note was delivered up to him. 5 C. 654 = 5 C.L.R. 586. **L**

- (11) *Ibid.*—Theft of negotiable instrument—Title of subsequent holder compared with that of the last holder.

When an instrument, such as a Government pro-note, has been stolen, the person from whom it was stolen has a good title to it, not only as against the thief, but as against any person who subsequently becomes the holder, unless such person can prove that the instrument had become negotiable at the time it was stolen, and that he obtained it *bona fide* for value without notice of the theft. (*Ibid.*) **M**

- (12) East India Company pro-notes—Forgery—Acknowledgment.

In an action against the East India Company by the holder of a forged imitation of one of their promissory notes issued by the Governor-General in Council at Calcutta, *held* that the Company were not bound by the acknowledgment of it as genuine by a clerk in their Accountant-General's Office who was authorised by the Accountant-General to compare all such notes with the register, but not authorized to certify their genuineness, although it appeared that it was his practice to do so. 2 Knapp 245. **N**

II.—Government securities.

- (1) Government securities—Bequest of—Interest accruing before testator's death.

The interest on Government securities bequeathed by will in certain specified amounts accruing due before the testator's death, does not pass to the legatees. 14 C. 222. (R., 10 C.L.J. 355 = 14 C.W.N. 18). **O**

- (2) Contract to deliver Government paper.

A Court will require strict evidence that a contract, *per se* legal, is intended to operate illegally. It is not necessary, in order to support a contract, that the plaintiff should have possession of the Government paper when the contract is entered into; it is sufficient if he is in a position and is ready and willing to deliver it at due date. A letter, stating "the bearer will hand over to you Rs. 75,000, 5½ loan notes" is sufficient to establish the *bona fide* nature of a transaction for purchase of Company's paper. Cer. I; 2 Hyde, 121. **P**

II.—Government Securities—(Concluded).

(3) Contract for sale of Government paper—Suit for non-acceptance—Readiness and willingness.

(a) Where a contract for the sale and purchase of Government paper provides for the delivery of the paper on a subsequent date, it is not necessary, in order to sustain an action against the buyer for non-acceptance on the due date that the plaintiff should have taken the Government paper contracted for to the place of business of the defendant and then and there made an actual tender of it. 9 C. 791. Q

(b) Where on the face of the contract, it did not appear that either party was called upon to act first, it was held that the plaintiff was not entitled to recover, unless he proved performance of, or an effort to perform, his part. In the absence of any indication on the part of the plaintiff that he was ready to deliver, the defendant is not liable for non-acceptance. The readiness and willingness on the part of the plaintiff must be substantial, something on which the defendant may act, not a readiness and willingness concealed in the plaintiff's mind. 1 Ind. Jur. N.S. 17. R

(4) Government securities deposited—Conversion into papers with lower interest, Effect of—Liability of parties.

In this case, in pursuance of notice given by the agent of Government to the Registrar of the Sudder Court, certain Government securities deposited in Court, and at the time bearing 5 per cent. interest, had been converted into Government notes bearing only 4 per cent. interest. This had been done before the division of the notes amongst the parties entitled to the income, and though the delivery of the notes to the claimant was irregular, it did not affect the conversion of the securities which was the act, not of the parties, but of the Government and of the Court, the conversion, however, having reduced the Rs. 3,000, which the annuities were entitled to receive, by one-fifth, the appellant, under his engagement, was liable to make it good and the judgment of the Sudder Court complained of was therefore recommended by the Judicial Committee to be confirmed. 2 W.R.P.C. 48=4 Sar.*777. S

(5) *Ibid.*—Limitation Act (XY of 1877), Sch. II, Art. 145—Loan of deposit.

Art. 145, Sch. II of the Limitation Act, is applicable to the case of a deposit of Government securities, even if the transaction is considered as a loan of such securities and not merely as a deposit. 7 C.W.N. 476 8 C.W.N. 500; 31 C. 519. T

THE INDIAN SECURITIES ACT, 1886.

TABLE OF CASES NOTED IN THIS ACT.

I.L.R. Allahabad Series.		PAGE
19 A 267 (P C)	Nawab Ibrahim Ali Khan v. Ummatal Zohra ...	20
I.L.R. Bombay Series.		
5 B 268	Merbai v. Perozbai ...	19, 21
7 B 229	Hirbai v. Jan Mahomed Khalakdina ...	21
12 B 585	Anupchand Hemchand v. Champsi Ugerchand ...	19
17 B 486	Bhaskar Purshotam v. Sarasvathibai ...	21
24 B 65 (70)	Hunsraj v. Ruttonji ...	4, 19
27 B 31	Jotiram v. Ramkrishna ...	20
I.L.R. Calcutta Series.		
5 C 654	The Bank of Bengal v. Mendes ...	8, 22
9 C 791	Juggernaut Sew Bux v. Ram Dyal ...	19, 23
14 C 222	Gokool Nath Guha v. Issur Lochun Roy ...	22
31 C 519	Administrator-General of Bengal v. Kristo Kamini Dassee ...	23
32 C 447	Boni Madhub Dass v. Sadasook Kotary ...	19
I.L.R. Madras Series.		
17 M 480	Eshoor Doss v. Venkata Subba Rau ...	19
18 M 306	_____ v. _____ ...	19
Punjab Record.		
85 P R 1898	Dholan Das v. Ralya Shah ...	19
Bombay High Court Reports.		
3 B H C R O C 69...	Parbhudas v. Ram Lal ...	9
Bombay Law Reporter.		
4 Bom L R 754	Joitaram v. Ramkrishna ...	20
10 Bom L R 1202	Manchershaw v. Ardeshir ...	21
Calcutta Law Journal.		
10 C L J 355	Bhupati Nath Smrititirtha v. Ram Lal Maitra ...	22
12 C L J 470	Hira Lal Chatterjee v. Raj Kumar Mookerjee ...	4, 5, 19
Calcutta Law Reports.		
5 C L R 536	The Bank of Bengal v. Mendes ...	8, 22
Calcutta Weekly Notes.		
7 C W N 476	Kristo Kamini Dassi v. Administrator General of Bengal ...	23
8 C W N 500	The Administrator General of Bengal v. Sroemutty Kristo Kamini Dassee ...	23
14 C W N 18	Bhupati Nath Smrititirtha v. Ram Lal Maitra ...	22
15 C W N 1018	Abinash Chandra Paul v. Probodh Chandra Paul ...	

TABLE OF CASES.

Bengal Law Reports.			PAGE
13 B L R 359	... Monmohinee Debi v. The Secretary of State	...	6, 10, 19
Weekly Reports.			
2 W R (P C) 48	... Rajah Sutteeschunder Roy v. Somasoondery Debia		23
15 W R 267	... Bidya Soondaree Doesee v. Baboos Ashootosh Dhur and Kumola Kant Sein	...	22
18 W R 58	... Kaminee Debia v. Radha Sham Koondoo	...	11
22 W R 106	... Monmohinee Debi v. The Secretary of State	...	6, 10, 19
Oudh Cases.			
Old S C 7 Oudh	... Imami v. Debi Din	...	19
9 O C 174	... Jagau Nath v. The Allahabad Bank Ltd ; Lucknow & others	...	20
Moor's Indian Appeals.			
5 M I A 1	... The Bank of Bengal v. Macleod	...	4
Law Reports, Indian Appeals.			
24 I A 1	... Nawb Ibrahim Ali Khan v. Ummatul Zohra	...	20
Upper Burma Rulings.			
U B R (1897— 1901), Vol. II, 399	... Thiruvengada Rajoo v. Maung Nyo and Maung Ba Aung	...	19
The Indian Miscellaneous Cases.			
1 S r 777	... Rajah Sutteeschunder Roy v. Sainasoondery Debia		23
2 Hyde 121	... Mohendronauth Mitter v. Koylasnauth Bannerjee		22
The English Miscellaneous Cases.			
Levy v. Abercorris State Co., (1888) 37 Ch D 264		...	4

THE INDIAN SECURITIES ACT, 1886.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

ct XXVII of 1860, Certificate—Debts due to son—Proof of possession of the notes—Government Promissory Notes—Authority to negotiate—Hindu widow, **K, 22**.

Act XXVI of 1881, applying to Government promissory note—**O, 5**.

S. 13—Negotiable instrument—Government promissory notes, *H—J, 4*.

Ss. 14, 46 and 48—Transfer of interest in—Government Promissory Notes, **G, 19**.

Act XIII of 1886, Statement of Objects and Reasons, **A, 3**.

Report of the Select Committee, **B, 3**.

Proceedings in Council, **C, 3**.

Act was declared in force, **D, 3**.

Short title and commencement, **S, 1, 3**.

Application of S. 7 (1) of the, to certain offices, **S, 7, 8**.

Agreement, Stamp duty on, for sale of Government security, **P, 4**.

Allonges, Prohibition of indorsements on, to Government securities, **S, 6, 5, 6**.

Indorsement on—, what is, **P, Q, 6**.

B

Bank of Bengal, Public debt branch of, a Government office, **T, 8**.

C.P.C., 1882, S. 268—Attachment—Government Promissory notes, **Z, 19**.

C

Certificates, Transfer and discharge of, and coupons, **S, 8, 9**.

Debts due to son—Proof of possession of the notes—Government Promissory Notes—Authority to negotiate—Hindu widow, **K, 22**.

C.P.C., 1882, S. 268—Attachment—Government Promissory Notes, **Z, 19**.

Contracts, Rules as to securities deposited with Government for completion of **17, 18**.
to deliver Government paper, **P, 22**.

for sale of Government paper—Suit for non-acceptance—Readiness and Willingness, **Q, R, 23**.

Coupons, Transfer and discharge of, **S, 8, 9**.

D

Debt, Government promissory note, **K, 4**.

Debenture, What it is, **L, 4**.

Definition, **M, 5**.

Discharge, Transfer and, of certificates and coupons, **S, 8, 9**.

E

- East India Company pro-notes, Forgery—Acknowledgment, N, 22.*
Endorsement, Transfer of Government security by, G, 4.
 Onus—Government Promissory notes—Transfer, of, A—D, 19.
 Prohibition of, on allonges to Government securities, S. 6, 5, 6.
 On allonge—Allonge, what is, P, Q, 6.
 Endorser of Government security not liable for amount thereof, S. 9, 9.

F

- Future delivery, Sale of shares for—Readiness—Willingness, U, V, 9.*

G

- Gift, of property intended to be made by father to daughter—Gift not completed—Transfer whether valid as declaration of trust—Nature of evidence required to establish trust, I, 20, 21.*
 Of Government Notes—Necessity of endorsement to complete—Creation of trust by donor constituting himself trustee—Enforceability of trust against representative of donor—Practice among Parsis, J, 21.
Government, period after which the, is released from liability in respect of original security, S. 13, 11.
 Rules as to securities deposited with Government for completion of contracts, 17, 18.
Government office, public Debt branch of Bank of Bengal, a, T, 8.
Government paper, Contract to deliver, F, 22.
 Contract for sale of—Suit for non-acceptance—Readiness and Willingness, Q, R, 23.
Government promissory notes, S. 13, Act XXVI of 1881—Negotiable instrument, II—J, 4.
 Debt, K, 4.
 Negotiable Instrument Act applying to, Q, 5.
 Bank of Bengal—C.P.C., 1882, S. 268—Attachment, Z, 19.
 Transfer of—Indorsement—Onus, A—D, 19.
 Transfer of—Notice, R, 19.
 Transfer when can be impeached, F, 19.
 Transfer of interest in—Negotiable Instruments Act (XXVI of 1881), Ss. 14, 46 and 48, G, 20.
 Endorsement, and delivery of, by Muhammadan father to son, effect of—Evidence of conduct of parties, H, 20.
Gift of property intended to be made by father to daughter—Gift not completed—Transfer whether valid as declaration of trust—Nature of evidence required to establish trust, I, 20, 21.
 Gift of Government Notes—Necessity of endorsement to complete gift—Creation of trust by donor constituting himself trustee—Enforceability of trust against representative of donor—Practice among Parsis, J, 21.
 Authority to negotiate—Hindu widow—Act XXVII of 1860—Certificate—Debts due to son—Proof of possession of the notes, K, 22.
 Deposit of stolen, as security—Detention by Public Debt Office—Claim to return note upon suit for recovery of debt, L, 22.
 Theft of negotiable instrument—Title of subsequent holder compared with that of the last holder, M, 22.

- Government security*, Stamp duty on agreement for sale of, *F*, 4.
 Transfer of, by endorsement, *G*, 4.
 Notice of trust not receivable, *S*, 4, 5.
 Right of survivors of joint payees of, *S*, 5, 5.
 Prohibition of indorsements on allonges on to, *S*, 6, 5, 6.
 Holding of, by holders for the time being of public offices, *S*, 7, 6, 8.
 Indorser of, not liable for amount thereof, *S*, 9, 9.
 Impression of signature on, *S*, 10, 9.
 Issue of renewed securities, *S*, 11, 10.
 Security lost or stolen—Agreement by both parties to obtain duplicate—Laches of borrower, *Y*, 11.
 Issue of duplicate securities, *S*, 12, 10, 11.
 Request of—Interest accruing before testator's death, *O*, 22.
 Deposited—Conversion into papers with lower interest—Effect of—Liability of parties, *S*, 23.
 Limitation Act (XV of 1877), Sch. II, Art. 145—Loan of deposit, *T*, 23.
Governor General in Council, Power of, to make rules, *S*, 14, 11, 18.
 Publication of drafts and rules, *S*, 15, 18.

I

- Issue*, of renewed securities, *S*, 11, 10.
 Of duplicate securities, *S*, 12, 10, 11.

L

- Limitation Act (XV of 1877)*, Sch. II Art. 145—Loan of deposit, *T*, 23.

N

- Negotiable instrument*, Government promissory notes—*S*, 13, Act XXVI of 1881, *H—J* 4.
 Theft of—Title of subsequent holder compared with that of the last holder, *M*, 22.
Notice, of trust not receivable, *S*, 4, 5.
 Government—Transfer of—*E*, 19.

O

- Offices*, Application of *S*. 7 of the Act to certain, *S*, 7, 8.
Original security, Period after which the Government is released from liability in respect of, *S*, 13, 11.

P

- Prohibition*, of indorsements on allonges on Government securities, *S*, 6, 5, 6.
Publication, of drafts and rules, *S*, 15, 18.
Public debt branch, of Bank of Bengal, a Government office, *T*, 8.
Public Debt office, Government promissory notes, deposit of stolen, as security—Detention by—Claim to return note upon suit for recovery of debt, *L*, 22.
Public offices, Holding of Government securities by holders for the time being of, *S*, 7, 6—8.

R

- Renewal*, Issue, of renewed securities, *S*, 11, 10.
Repeal, of Acts III of 1881, XIX of 1885, *S*, 2, 4.
Rules, Power of Governor General in Council to make, *S*, 14, 11—18.
 under *S*, 14 of the Act, 12.
 Publication of drafts and, *S*, 15, 18.
 as to securities deposited for with Government completion of contracts, 17, 18.

S

Sale, of shares for future delivery—Readiness—Willingness, *U*, *V*, 9.

Securities, Rules as to, deposited with Government for completion of contracts, 17, 18.

Shares, Sale of, for future delivery—Readiness—Willingness, *U*, *V*, 9.

Signature, Impression of, on Government securities, *S*, 10, 9.

Stamp duty, on agreement for sale of Government security, *P*, 4.

Survivors, Right of, of joint payees of Government securities, *S*, 5, 5.

T

Theft, of negotiable instrument—Title of subsequent holder compared with that of the last holder, *M*, 22.

Transfer, of Government security by endorsement, *G*, 4.

and discharge of certificates and coupons, *S*, 8, 9.

Trust, Notice of trust not receivable, *S*, 4, 5.

THE EPIDEMIC DISEASES ACT.

(ACT III OF 1897.)

(WITH THE CASE-LAW THEREON)

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THE EPIDEMIC DISEASES ACT, 1897¹.

(ACT III OF 1897.)

[*Passed by the Governor-General of India in Council.*]

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE
4TH FEBRUARY 1897.

An Act to provide for the better prevention of the spread of
Dangerous Epidemic Disease.

WHEREAS it is expedient to provide for the better prevention of the
spread of dangerous epidemic disease; It is hereby enacted as follows :—
(Notes).

1.—“*The Epidemic Diseases Act, 1897.*”

(1) Statements of Objects and Reasons.

For ———, see Gazette of India, 1897, Pt. V, p. 21. A

(2) Report of the Select Committee.

For ———, see Gazette of India, 1897, Pt. V, p. 23. B

(3) Proceedings in Council.

For ———, see Gazette of India, 1897, Pt. VI, pp. 18 and 24. C

(4) Act was declared in force.

The ——— in Upper Burma (except the Shan States) by the Burma Laws Act,
1898 (XIII of 1898).

It has been declared in force in the Santhal Parganas by notification under
the Santhal Parganas Settlement Regulation 1872 (III of 1872), S. 3,
as amended by the Santhal Parganas Justice and Laws Regulation,
1899 (III of 1899), S. 3 and in the Angul District under S. 5 of the
Angul District Regulation, 1894 (I of 1894), see Gazette of India,
1899, Pt. I, p. 1064. D

(5) Landlord and tenant — Lease — Covenant for quiet enjoyment — Tenant compelled to vacate premises — Liability to pay rent.

When, under the Epidemic Diseases Act, it becomes unlawful for a tenant to
occupy the premises in the manner contemplated by the lease, there
is no breach of the lessor's contract for quiet enjoyment and the
tenant is liable to pay the rent and taxes for the whole period.
1 Bom. L.R. 267. E

Short title, extent, and commencement. 1. (1) This Act may be called the Epidemic
Diseases Act, 1897.

(2) It extends to the whole of British India (inclusive of * *
* * British Baluchistan, the Santal Parganas, and the Pargana
of Spiti); and

(3) It shall come into force at once.

(Notes).

Legislative changes.

The words “Upper Burma” were repealed by the Burma Laws Act, 1898 (XIII
of 1898) see fifth schedule, F

2. (1) When at any time the Governor-General in Council is satisfied that India or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the Governor-General in Council, if he thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures, and, by public notice ¹ prescribe such temporary regulations to be observed by the public or by any person or class of persons as he shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation, if any) shall be defrayed.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Governor-General in Council may take measures and prescribe regulations for—

- (a) the inspection ² of any ship or vessel leaving, or arriving at, any port, in British India, and such detention thereof, or of any person intending to sail therein, or arriving thereby, as may be necessary; and
- (b) the inspection of persons travelling by railway or otherwise, and the segregation in hospital, temporary accommodation, or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

(3) The Governor-General in Council may, by general or special order, direct ³ that all or any of the powers conferred by this Act may also be exercised by any Local Government with respect to the territories administered by it.

(Notes).

1.—“The Governor-General...notice.”

Notifications.

For—issued under this section for—

- (1) Bengal, including the districts now under Eastern Bengal and Assam, *see* Bengal Statutory Rules and Orders, Vol. I.
- (2) Burma, *see* Burma Rules, Manual, Vol. I.
- (3) Central Provinces, *see* Central Provinces Rules and Orders.
- (4) Coorg, *see* Coorg Rules and Orders.
- (5) Madras, *see* Madras Rules and Orders, Vol. I.
- (6) United Provinces of Agra and Oudh *see* United Provinces List of Local Rules and Orders, Vol. I.

2.—“*Inspection.*”**Red Sea—Inspection of passengers.**

For special provision as to inspection of passengers sailing for ports in the Red Sea, see S. 30 of the Native Passenger Ships Act, 1887 (X of 1887). H

3.—“*Governor-General....Direct.*”(1) **Delegation of powers to Local Government.**

No. 302, dated the 4th February, 1897.—Whereas certain parts of India are visited by, and others threatened with, an outbreak of dangerous epidemic disease known as bubonic plague, the Governor-General in Council, in exercise of the powers conferred by S. 2, sub-sec. (3), of the Epidemic Diseases Act, 1897, is pleased to direct that the powers conferred by the said Act may be exercised by Local Governments with regard to their respective territories as follows:—

(a) All the said powers by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor (*now Governor*) of Bengal and Chief Commissioner of Burma;

(b) The powers conferred by S. 2, sub-s. (1), and sub-s. 2, clause (b), by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, the Lieutenant-Governor of the Punjab and the Chief Commissioner of the Central Provinces; and

(c) The powers conferred by section 2, sub-section (2), clause (b), by the Chief Commissioner of Assam, Coorg and British Beluchistan. [See Gazette of India, Pt. I, p. 102.] I

(2) **Rules issued in Bengal.**

For—in exercise of the powers conferred by that notification, see notification No. 85, Marine, dated 8th July, 1901, in Calcutta Gazette, 1901, Pt. I, p. 887. J

3. Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code ¹.

Penalty.

Act XLV of 1860.

(Notes).

1.—“*Any person....Penal Code.*”(1) **Ss. 2 and 3—Penal Code, Ss. 188, 511—Quarantine, attempt to evade.**

The notification published at p. 1897 of the Government Gazette, 1897, which says that persons coming to a place, from certain stations are liable to be detained for observation in a camp appointed for the purpose for a period which may extend to 10 days, is merely a notice informing persons of what they are liable to have to undergo. It makes this detention legal, so that they could not escape detention if called upon to undergo it, but it does not compel them to take the first step and offer themselves for detention.

Further, even supposing that it is an offence for persons liable to be quarantined to try and evade quarantine, a person cannot be said to have abetted even an attempt at evasion of quarantine on the part of another, by

1.—“Any person....Penal Code”—(Concluded).

purchasing an extra second-class return ticket from one station to another with the object of handing it over to such other person at the latter station of issue; for no offence can be said to have been committed until the latter had attempted to evade quarantine and the former had assisted him in so doing. Rat. Un. Cr. C. 966. K

- (2) **Penal Code, S. 188—Non-erection of segregation quarters—Person leaving the village against advice of plague authority—Epidemic Diseases Act, III of 1897, rule 2 (Proviso).**

Where no segregation quarters were erected outside a village as required by the proviso to rule 2 of the Rules sanctioned by Government under the Epidemic Diseases Act, a person could not be convicted under S. 188, I.P.C., merely because he was advised by the plague authority, a public servant, not to leave the village. 1 Bom. L.R. 31. L

- (3) **I.P.C., S. 188—Conviction under section read with rule 6 of the Mofussil Plague Rules framed under this Act.**

To warrant a conviction under S. 188, I.P.C., read with rule 6 of the Mofussil Plague Rules, it is necessary to prove

- (1) that the accused was the occupant of a house or building in which or the principal surviving member of the family amongst the members of which, sickness or death occurred, and
- (2) that the sickness or death was due or likely to be due to plague. 1 Bom. L.R. 222. M

- (4) **Epidemic Diseases Act, rule 6—Information as to plague patient.**

Rule 6, framed under this Act, does not require the person who is himself attacked with plague to give information of his own sickness, albeit he is an occupant of the house in which he is attacked. Looking at the language in which the rule is worded, it refers to third persons only. Rat. Un. Cr. C. 978. N

- (5) **Penal Code, S. 188—Disobedience to order—Sanction to prosecute.**

Where an order made and issued by the Government under this Act is republished in a Municipality by the Chairman, the order is not an order promulgated by a public servant, and no sanction is required as a condition precedent to prosecution for disobeying the order. 24 M. 70—2 Weir. 158. O

Protection to persons acting under Act¹.

4. No suit or other legal proceeding shall lie against any person for anything done or, in good faith intended to be done ² under this Act.

(Notes).

1.—“Protection to persons....under Act.”

Scope of section.

The provision in S. 4 of the Act is intended in the first place to protect a person in the defendant's position (Chairman of the Calcutta Corporation) against liability for irregularities that may occur in the proper performance of his duties under the Act, *e.g.*, the demolition of a hut under the provisions of this Act. 31 O. 829 (832). P

1.—“*Protection to persons....under Act*”—(Concluded).

- On any reasonable construction of the Act, he is also entitled to a similar protection against any omission in the performance of such a duty, e.g., an omission to take steps for the safe-guarding of property in the hut, or the protection of the public, which it would be his duty to take, if he were proceeding in a more leisurely way. 31 C. 829 (892) = 8 C.W.N. 681. Q

2.—“*Done or in good faith....done.*”

“Done or intended to be done” meaning—Omission to pay adequate compensation.

- (a) The words “done or intended to be done” in Epidemic Diseases Act, 1897, S. 4, do not include omissions. *Jolliffe v. Wallasey Local Board* (1878), 9 C.P. 162, *Expl.*, and *D.*, 31 C. 829 = 8 C.W.N. 681. R
- (b) A Magistrate, who omits to pay adequate compensation in respect of property demolished under the Act is personally liable and an action will lie against him in respect thereof even though he may have acted in his administrative capacity as Chairman of the Calcutta Corporation under cl. 2 of Plague Regulation A (Cal. Gaz. 1900, Pt. I, p. 1144). (*Ibid.*). S
- (c) The Magistrate’s decision as to the amount of compensation to be accorded is not final and can be reviewed by the Courts. (*Ibid.*). T

THE EPIDEMIC DISEASES ACT, 1897.

TABLE OF CASES NOTED IN THIS ACT.

I.L.R. Calcutta Series.			PAGE
31 C 829 (832) = 8	.		
C W N 681 ..	Ram Lall Mistry v. R. T. Greer	...	4, 5
.			
I.L.R. Madras Series.			
24 M 70 = 2 Weir			
158 ..	Queen Empress v. Santh and others	...	4
The Bombay Law Reporter.			
1 Bom L R 51 ..	Imperatrix v. Govind Gundo	...	4
———— 223 * ..	Queen Empress v. Abdul Hamid Molvi	...	4
———— 267 ..	Merwanji Mancherji Cama v. Sayed Sircar Alikhan		1
.			
The Calcutta Weekly Notes.			
8 C W N 681 = 31			
C 829 (832) ..	Ram Lall Mistry v. R. T. Greer	...	4, 5
Ratanlal's Unreported Criminal Cases.			
Rat Un Cr C 966 ..	Queen Empress v. Manekshaw Manchershaw	...	4
———— 978 ..	Queen Empress v. Mahadev Gopal	...	4
Indian Miscellaneous.			
2 Weir 158 = 24 M			
70 ..	Queen Empress v. Santh and others	...	4
English Cases.			
Jalliffe v. Wallasey Local Board, (1873) 9 C P 162			

* It is wrongly printed as 1 Bom L R 222.

THE EPIDEMIC DISEASES ACT, 1897.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

A

Act III of 1897, Statements of Objects and Reasons, **A**, 1.

Report of the Select Committee, *B*, 1.

Proceedings in Council, *C*, 1.

declared in force, *D*, 1.

Short title, extent, and Commencement, S. 1, 1.

Protection to persons acting under Act, S. 4, **A**, 5.

E

Epidemic disease, Power to take special measures and prescribe regulations as to dangerous, S. 2, 2, 3.

G

Governor General in Council, Power to take special measures and prescribe regulations as to dangerous epidemic disease, S. 2, 2, 3.

I

Information, as to plague patient—Epidemic Diseases Act, Rule 6, *N*, 4.

Inspection, of passengers—Red Sea, *II*, 3.

L

Landlord and tenant, Lease—Covenant for quiet enjoyment—Tenant compelled to vacate premises—Liability to pay, rent, *E*, 1.

Lease, Covenant for quiet enjoyment—Tenant compelled to vacate premises—Liability to pay rent, *E*, 1.

Local Government, Delegation of powers to, *I*, 3.

N

Notifications, issued under S. 2 of the Act, in various Presidencies, *G*, 2.

P

Passengers, Inspection of passengers—Red Sea, *II*, 3.

Penalty, Disobeying regulation or order under the Act, S. 3, 3—5.

Penal Code, S. 188—Non-erection of segregation quarters—Person leaving the village against advice of plague authority, *L*, 4.

Conviction under S. 188 read with rule 6 of the Mofussil Plague rules framed under this Act, *M*, 4.

Disobedience to order—Sanction to prosecute, *O*, 4.

Ss. 188, 511—Quarantine, attempt to evade, *K*, 3, 4.

Protection, to persons acting under the Act, S. 4, *P*, *Q*, **A**, 5.

Q

Quarantine, attempt to evade—Penal Code, Ss. 188, 511, K, 3, 4.

Rent, Lease—Liability to pay, Covenant for quiet enjoyment—Tenant compelled to vacate premises, E, 1.

Rules, issued in Bengal, J, 3.

S

Segregation quarters, Non-erection of—Person leaving the village against advice of plague authority, L, 4.

W

Words and phrases, “ Done or intended to be done ” in S. 4 meaning—Omission to pay adequate compensation, R, S, 5.

THE REVENUE RECOVERY ACT.

(ACT I OF 1890.)

(WITH THE CASE-LAW THEREON)

COMPILED AT

THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

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T. A. VENKASAWMY ROW

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THE REVENUE RECOVERY ACT, 1890¹.

(ACT I OF 1890.)

[Passed on the 14th February, 1890.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act,	How affected.
1890.	I	The Revenue Recovery.	Rep. in part, Act XIII of 1898.

An Act to make better provision for recovering certain public demands.

WHEREAS it is expedient to make better provision for recovering certain public demands; It is hereby enacted as follows:—

(Notes).

1.—“The Revenue Recovery Act, 1890.”

(1) Statements of Objects and Reasons.

For——, see Gazette of India, 1887, Pt. V, p. 128.

A

(2) Report of the Select Committee.

For——, see Gazette of India, 1890, Pt. V, p. 11.

B

(3) Proceedings in Council.

For——, see Gazette of India, 1887, Pt. VI, pp. 66 and 67 and *Ibid*, 1890, Pt. VI, pp. 7 and 12.

C

(4) Act has been declared in force.

This—in the Santhal Pargannas under S. 3 of the Santhal Pargannas Settlement Regulation (III of 1872) as amended by the Santhal Pargannas Justice and Laws Regulation, 1899 (III of 1899).

It has been declared in force in the Angul District by the Angul District Regulation, 1894 (I of 1894).

It has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890).

D

(5) Revenue Recoveries Act—Scope.

This is an Act of the Imperial Legislature. It has more scope than the local Acts.

E

(6) S. 30, Income Tax Act—Extending procedure prescribed by this Act.

S. 30 of the Income Tax Act has not the effect of converting income tax into an arrear of land revenue due in respect of the land which may be brought to sale for realisation of the income tax, but its effect simply is to extend the procedure prescribed by (Madras) Act II of 1864 and (India) Act I of 1890, to the recovery of arrears of income tax. 26 M. 230 (233) = 12 M.L.J. 368.

F

Title, extent and
commencement.

1. (1) This Act may be called the Revenue
Recovery Act, 1890.

(2) It extends to the whole of British India, * * * * and
British Baluchistan; and

(3) It shall come into force at once.

(Note).

Legislative changes.

The words "inclusive of Upper Burma" in S. 1 (2) were repealed by Sch. V
to The Burma Laws Act, 1898 (XIII of 1898). G

Definitions.

2. In this Act, unless there is something
repugnant in the subject or context,—

(1) "district" ¹ includes a presidency-town;

(2) "Collector" means the chief officer in charge of the
land-revenue administration of a district; and

(3) "defaulter" means a person from whom an arrear of land-
revenue, or a sum recoverable as an arrear of land-revenue ³, is due,
and includes a person who is responsible as surety for the payment
of any such arrear or sum.

(Notes).

1.—"District."

District—Definition.

The General Clauses Act (X of 1897) does not define the word "District".

2.—"Collector."

(1) Collector—Definition.

"Collector" shall mean, in a Presidency town, the Collector of Calcutta,
Madras or Bombay, as the case may be, and elsewhere the chief
officer in charge of the revenue-administration of a district. S. 3 (10),
General Clauses Act (X of 1897). H

(2) Collector—Jurisdiction.

See Regulation II of 1803. I

3.—"Sums recoverable as an arrear of land revenue."

Examples.

See Act XIX of 1883 (Land Improvements Acts) S. 7, cls. (a)—(d); Act XII of
1884, S. 5; Act I of 1858; S. 6. Act VI of 1889, S. 20 (1). J

3. (1) Where an arrear of land-revenue, or a sum recoverable
as an arrear of land-revenue, is payable to a
Collector by a defaulter being or having property
in a district other than that in which the arrear
accrued or the sum is payable, the Collector may
send to the Collector of that other district a

Recovery of public
demands by enforce-
ment of process in
other districts than
those in which they
become payable.

certificate in the form as nearly as may be of the schedule, stating—

- (a) the name of the defaulter and such other particulars as may be necessary for his identification, and
- (b) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it, and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3). The Collector of the other district ¹ shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district.

(Note).

1.—“The Collector of....district.”

The other district.

_____, may be in the same Presidency or in another Presidency.

K

4. (1) When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit for ¹ the re-payment of the amount or the part thereof so paid.

Remedy available to person denying liability to pay amount recovered under last foregoing section.

(2) A suit under sub-section (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose.

(3) In the suit the plaintiff may, notwithstanding anything in the last foregoing section, but subject to the law in force at the place aforesaid, give evidence ² with respect to any matter stated in the certificate.

(Notes).

1.—“Suit.”

Scope of section.

This section does not prescribe the period within which the suit should be brought. But in this respect the law of the place where the suit is allowed to be brought should be observed.

L

2.—“Evidence.”

Oral evidence.

This is subject to the provisions of the Evidence Act.

M

5. Where any sum is recoverable as an arrear of land-revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land-revenue which has accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.

Recovery by Collectors of sums recoverable as arrears of revenue by other public officers or by local authorities.

(1) When the Collector of a district receives a certificate under this Act, he may issue a proclamation prohibiting the transfer or charging of any immoveable property belonging to the defaulter in the district.

Property liable to sale under this Act.

(2) The Collector may at any time, by order in writing, withdraw the proclamation, and it shall be deemed to be withdrawn when either the amount stated in the certificate has been recovered or the property has been sold for the recovery of that amount.

(3) Any private alienation of the property or of any interest of the defaulter therein, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof, shall be void as against the Government and any person who may purchase the property at a sale held for the recovery of the amount stated in the certificate.

(4) Subject to the foregoing provisions of this section, when proceedings are taken against any immoveable property under this Act for the recovery of an amount stated in a certificate, the interests of the defaulter ¹ alone therein shall be so proceeded against, and no incumbrances created, grants made or contracts entered into by him in good faith ² shall be rendered invalid by reason, only of proceedings being taken against those interests.

(5) A proclamation under this section shall be made by beat of drum or other customary method and by the posting of a copy thereof on a conspicuous place in or near the property to which it relates.

(Notes).

1.—“Any private alienation . . . Interests of the defaulter.”

Revenue Recovery Act (Madras) 11 of 1864, Ss. 5, 55, 44—Sale of land in Court auction—Land sold not transferred to name of purchaser in register of transfer—Act I of 1890, S. 6 (3) and (4)—Subsequent sale of same land for arrears of revenue due by judgment-debtor in respect of land held under another pattah—Reg. XXVI of 1902, S. 3—Validity of revenue sale.

Plaintiff sued for a declaration that a revenue sale was invalid. The first defendant had lands in two villages. The lands entered in the pattah held by the first defendant in one of the villages were sold in execution of a Civil Court decree and purchased by the plaintiff. It was admitted that, at the date of the Court sale, no arrears on account of land revenue were due by the first defendant in either village. Subsequently, the lands purchased by the plaintiff were sold by Government for arrears of revenue due in respect of land in the first defendant's pattah in the other village. Plaintiff had not applied to the Collector for transfer of pattah for the lands in his name. *Held* that the plaintiff was entitled to a decree as prayed for.

Per *Moore, J.*—S. 3, Reg. XXVI of 1902, laid down that no transfer of land which was not registered exempted the person in whose name the entire estates were registered from paying the revenue due to Government from such land. Consequently, the transfer by Court sale of the lands from the first defendant to the plaintiff did not relieve the first defendant or the lands from liability on account of land revenue due by him for those lands, inasmuch as there was no change of registry regarding them in the Collector's office. Though S. 5, Act 11 of 1864, (Madras) provided that all the moveable and immoveable property of a defaulter, wherever it was found, could be proceeded against in order to recover arrears of land revenue due by him, yet, having regard to the provisions of S. 6, sub-sections (3) and (4) of Act I of 1890, what was sold at the revenue sale was the interest of the defaulter in the lands, and that interest was then, in consequence of the prior sale at Court auction and purchase by the plaintiff, practically nothing. 26 M. 521 = 13 M.L.J. 139. **N**

2.—“Good faith.”

Good faith.

A thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not. S. 3 (20), General Clauses Act, X of 1897. **O**

Saving of local laws relating to revenue.

7. Nothing in the foregoing sections shall be construed—

- (a) to impair any security provided by, or affect the provisions of, any other enactment for the time being in force for the recovery of land-revenue or of sums recoverable as arrears of land-revenue, or
- (b) to authorize the arrest of any person for the recovery of any tax payable to the corporation, commissioner,

committee, board, council or person having authority over a municipality under any enactment for the time being in force.

8. When this Act has been applied to any local area which is under the administration of the Governor General in Council but which is not part of British India¹, an arrear of land-revenue accruing in that local area, or a sum recoverable as an arrear of land-revenue and payable to a Collector or other public officer or to a local authority in that local area, may be recovered under this Act in British India.

Recovery in British India of certain public demands arising beyond British India.

(Note).

1.—“Act has been....British India.”

Notification applying the Act.

For — to all territories which are under the administration of the Governor General in Council but which are not part of British India, including the territories for the time being administered by the Agent to the Governor-General in Baluchistan as such Agent, see No. 1415-I, dated 30th April, 1890, Western India volume of Macpherson's Lists of British Enactments in force in Native States.

THE SCHEDULE.

CERTIFICATE.

[See section 3, sub-section (1).]

From

The Collector of

To

The Collector of

Dated the of 18 .

The sum of Rs. is payable on account of by
, son of , resident of , who is believed (to be
at) (to have property consisting of at)
in your district.

Subject to the provisions of the Revenue Recovery Act, 1890, the said sum is recoverable by you as if it were an arrear of land-revenue which had accrued in your own district, and you are hereby desired so to recover it and to remit it to my office at

A.B.,
Collector of

THE REVENUE RENT RECOVERY ACT, 1890.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S, in Brevier Roman denotes the section.

Act (Madras) II of 1864—Revenue Recovery, Ss. 5, 55, 44—Sale of land in Court auction—Land sold not transferred to name of purchaser in register of transfer—Subsequent sale of same land for arrears of revenue due by judgment-debtor in respect of land held under another pattah—Validity of Revenue sale **N, 5.**

Act I of 1890, Statements of Objects and Reasons, **A, 1.**

Report of the Select Committee, **B, 1.**

Proceedings in Council, **C, 1.**

has been declared in force, **D, 1.**

Scope, **E, 1.**

S. 30, Income Tax Act (II of 1886)—Extending procedure prescribed by this Act, **F, 1.**

Title, extent and commencement, **S. 1, 2.**

Property liable to sale under, **S. 6, 4, 5.**

B

British India, Recovery in, of certain public demands arising beyond, **S. 8, 6.**

C

Collector, Definition, **H, 2.**

Jurisdiction, **I, 2.**

Recovery by, of sums recoverable as arrears of revenue by other public officers or by local authorities, **S. 5, 4.**

D

Definition, District, **S. 2, 2.**

Collector, **S. 2, 2.**

Defaulter, **S. 2, 2.**

District, Definition, **2.**

E

Evidence, Oral, **M, 3.**

G

Good faith, Definition, **O, 5.**

L

Local authorities, Recovery by Collectors of sums recoverable as arrears of revenue by **S. 5, 4.**

P

Public officers, Recovery by Collectors of sums recoverable as arrears of revenue by other **S. 5, 4.**

Process, Recovery of public demands by enforcement of, in other districts than those in which they become payable, S. 3, 2, 3.

Property, liable to sale under this Act, S. 6, 4, 5.

Public demands, Recovery of, by enforcement of process in other districts than those in which they become payable, S. 3, 2, 3.

Recovery in British India of certain, arising beyond British India, S. 8, 6.

R

Recovery, of public demands by enforcement of process in other districts than those in which they become payable, S. 3, 2.

by Collectors of sums recoverable as arrears of revenue by other public officers or by local authorities, S. 5, 4.

in British India of certain public demands arising beyond British India, S. 8, 6.

Reg. XXVI of 1802, S. 3—Sale of land in Court auction—Land sold not transferred to name of purchaser in register of transfer—Subsequent sale of same land for arrears of revenue due by judgment-debtor in respect of land held under another pattah, N, 5.

Remedy, available to person denying liability to pay amount recovered under S. 3 of this Act, S. 4, 3.

Revenue, Saving of local laws relating to S. 7, 5, 6.

Recovery in British India of certain public demands arising beyond British India, S. 8, 6.

S

Saving, of local laws relating to revenue, S. 7, 5, 6.

Suit, Remedy available to person denying liability to pay amount recovered under S. 3 of this Act, S. 4, 3.

Scope of section 4 of the Act, I, 3.

W

Words and Phrases, Meaning of—District, S. 2, 2.

„ Collector, S. 2, 2.

„ Defaulter, S. 2, 2.

THE REVENUE RENT RECOVERY ACT, 1890.

TABLE OF CASES NOTED IN THIS ACT.

	I. L. R. Madras Series.	PAGE
26 M 230 (233) -		
12 M L J 368 ...	Kadir Mohideen Marakkayar v. N. V. Muthukrishna Ayyar ...	1
26 M 521 - 13 M		
L J 139 ...	Narayana Raja v. Ramachandra Raja ...	5
	The Madras Law Journal.	
12 M L J 368 - 26		
M 230 (233) ...	Kadir Mohideen Marakkayar v. N. V. Muthukrishna Aiyar ...	1
13 M L J 139 - 26		
M 521,	Narayana Raja v. Ramachandra Raja ...	5

THE
SUPREME COURTS' OFFICERS
TRADING ACT.

(ACT XV OF 1848.)

(WITH THE CASE-LAW THEREON)

COMPILED AT

THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

AND PUBLISHED BY

T. A. VENKASAWMY ROW

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T. S. KRISHNASAWMY ROW

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THE SUPREME COURTS' OFFICERS TRADING ACT, 1848. (ACT XV OF 1848 ¹.)

[Passed on the 17th June, 1848.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act	How affected.
1848.	XV	Supreme Courts' Officers Trading.	Rep., in part, Act XII of 1876.

An Act to forbid trading by the officers of the Supreme Courts.

For the better discharge of their duties by the officers of the undermentioned Courts of Justice ² : It is enacted as follows :—

Preamble.

(Notes).

1.—‘Act XV of 1848.’

Short title.

“Supreme Courts’ Officers Trading Act, 1848” See the Indian Short Titles Act, 1897 (XIV of 1897). A

2.—“Officers. . Courts of Justice.”

Cf. The Indian High Courts Act, 1861 (24 and 25 Vic., c. 104), S. 1.

1. No officer of any of the Courts of Judicature established by Royal Charter within the territories subject to the Government of the East India Company, or any Court established for the relief of insolvent debtors within the said territories, shall directly or indirectly by himself, or by any other person or persons on his behalf, accept from any person or persons any gift or reward for any act or behaviour in his office, other than his legal salary and fees and profits of office, or hold any office in any bank or public company, except as hereinafter excepted or carry on or be concerned in any dealings as a banker or trader or as agent, factor or broker either for his own advantage or for the advantage of any other person or persons,

Prohibition,¹ in case of officers of Supreme Courts, against accepting gifts ;

holding certain offices ; carrying on dealings.

2 Act XV of 1848 (SUPREME COURTS' OFFICERS TRADING). [Ss. 1 to 4

except such dealings as it may be part of the duty of any such officer by virtue of his office to carry on.

(Notes).

1. — "Prohibition....."

Ss. 19, 21, 31. Insolvency Act (11 & 12 Vic., Chap. 21)—Act XV of 1848 (Supreme Courts' Officers)—Sale of Insolvent's estate subject to mortgage—Official Assignees Commission.

(a) An order in insolvency proceedings was made directing the Official Assignee to sell certain immoveable properties which were subject to a mortgage, on the application of the mortgagee, with the consent of the Official Assignee: On the question as to the commission payable to Official Assignee. *Held* that the Official Assignee was entitled to commission out of the insolvent's estate, not on the full value of the property sold, but only on the amount coming to the insolvent's estate. (13 B.L.R. App. 9 Com.) 36 C. 990=4 Ind. Cas. 697. **B**

N.B.—The attention of the Court in 13 B.L.R. App. 9 was not called to the Supreme Courts' Officers Act. (*Ibid*). **C**

(b) The Official Assignee cannot claim commission on the full value of the properties *qua* auctioneer, on account of the prohibition contained in the Supreme Courts' Officers Act. (*Ibid*). **D**

(c) Besides a trustee having power to sell by auction cannot employ himself as the auctioneer and charge the trust estate with his commission. (*Ibid*). **E**

(d) The practice of the Court for 30 years to allow commission on the full value of the properties sold, was overruled as being contrary to the express words of both the Indian Insolvency Act and the Supreme Courts' Officers Act. (*Ibid*). **F**

2. This Act shall not be construed to forbid any officer of any of the said Courts, who is also a practising advocate, attorney, solicitor or proctor in any of the said Courts, from taking the usual fees and emoluments of advocates, attorneys, solicitors or proctors, nor to apply to any advocate, attorney, solicitor, proctor, sheriff, assignee, receiver or committee, so far as he is held to be in that capacity merely for some purposes an officer of any of the said Courts.

Exemption of officers who are also advocates, etc.

3. This Act shall not be construed to forbid any officer of any of the said Courts from holding any unpaid office in any society for charitable purposes or for the advancement of knowledge, or for the encouragement of science, art or manufactures.

Holding unpaid office in society.

4. Every officer of any of the said Courts who shall knowingly offend against this Act shall, on conviction thereof, be liable to be punished by deprivation of his office, and also, by the sentence of the Court before which he shall be convicted, may be declared incapable, and in that

Punishment for contravention of Act.

case shall become incapable, of being appointed to the same or any other office of the same Court, or to serve Her Majesty * * * in the territories under the Government of the East India Company, or in such part of the said territories as shall be specified in the sentence, or in the discretion of the Court, may be otherwise punished by fine or fine and imprisonment for his misdemeanour as to the Court shall seem fit, regard being had to the nature of his offence.

(Note).

Legislative Changes.

The words " or the East India Company " were repealed by the Repealing Act, 1876 (XII of 1876). G

THE SUPREME COURT'S OFFICERS TRADING ACT, 1848.

TABLE OF CASES NOTED IN THIS ACT.

I. L. R. Calcutta Series.			PAGE
36 C 990--4 Ind			
• Cas 697	... Official Assignee's Commission, <i>In Re</i>	...	2
"			
The Bengal Law Reports.			
13 B L R App 9			
Com	... Howard Brothers <i>In the matter of</i>	...	2
Indian Cases			
4 Ind Cas 697--36			
C 990	... Official Assignee's Commission, <i>In Re</i>	...	2

THE SUPREME COURT'S OFFICERS TRADING ACT, 1848.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S, in Brevior Roman denotes the section.

A

Act XV of 1848, Preamble, 1.

Short title, *A*, 1.

Exemption of officers who are also advocates, etc., S. 2, 2.

Holding unpaid office in society, S. 3, 2.

Punishment for contravention of, S. 4, 2.

Advocates, Exemption of officers who are also, etc., Act V of 1848, S. 2, 2.

E

Exemption, of officers who are also advocates, etc, Act V of 1848, S. 2, 2.

G

Gifts, Prohibition, in case of officers of Supreme Courts, against accepting, S. 1, 1, 2.

I

Insolvency Act (11 and 12 Vic., Chap. 21), Ss. 19, 21, 31—Sale of insolvent's estate subject to mortgage—Official Assignee's Commission, *B—F*, 2.

O

Officers, Exemption of, who are also advocates etc.,—Act V of 1848, S. 2, 2.

— of *Supreme Courts*, Prohibition in case of, against accepting gifts; holding certain offices; carrying on dealings, S. 1, 1, 2.

Official Assignee's Commission—On a sale of Insolvent's estate subject to mortgage, *B—F*, 2.

P

Prohibition, in case of officers of Supreme Courts against accepting gifts; holding certain offices, carrying on dealings, S. 1, 1, 2.

Punishment, for contravention of Act, S. 4, 2.

S

Sale, of Insolvent's estate subject to mortgage—Official Assignee's Commission—Ss. 19, 21, 31, *Insolvency Act (11 & 12 Vic., Chap. 21)*, *B—F*, 2.

THE
GOVERNMENT MANAGEMENT OF
PRIVATE ESTATES ACT.

(ACT X OF 1892.)

(WITH THE CASE-LAW THEREON)

COMPILED AT
THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY

AND PUBLISHED BY

T. A. VENKASAWMY ROW,

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THE GOVERNMENT MANAGEMENT OF PRIVATE ESTATES ACT, 1892.

(ACT X OF 1892.)

(Passed on the 25th October, 1892.)

HISTORICAL MEMOIR.

Year.	No of Act.	Name of Act.	How affected.
1879	IX(Ben.)	Court of Wards Act, 1879 ...	Rep., in part, Act X of 1892.
1881	III(Ben.)	Do 1881 ...	Do
1892	X	Government Management of Private Estates Act, 1892 ...	Rep., in part, Act XIII of 1898, S. 18

An Act to provide for the levy of a rate on private estates under the management of the Government to meet the cost of supervision and management.

WHEREAS it is expedient to provide for the levy of a rate on private estates under the management of the Government to cover the cost of all Government establishments in so far as they are employed in the supervision and management of such estates, other than establishments specially entertained for any particular estate or group of estates, and to meet all contingent expenditure incurred by the Government in connection with such supervision and management : It is hereby enacted as follows :—

(Notes).

1.—“Act X of 1892.”

(1) Statement of Objects and Reasons.

For—see Gazette of India, 1892, Pt. V, p. 14.

A

(2) Report of the Select Committee.

For—see Gazette of India, 1892, Pt. V, p. 69.

B

(3) Proceedings in Council.

For—see Gazette of India, 1892, Pt. VI, p. 73.

C

(4) Places where has been declared to be in force.

This Act has been declared in force in :—

(1) Upper Burma (except the Shan States) by the Burma Laws Act, 1898, (XIII of 1898).

(2) The Santhal Parganas by the Santhal Parganas Settlement Regulation, 1872 (III of 1872), S. 3, as amended by the Santhal Parganas Justice and Laws Regulations, 1899 (III of 1899), S. 3.

D

2 Act X. of 1892 (GOV. MANAGEMENT OF PRIVATE ESTATE). [Ss. 1 & 2

Title, extent, and
commencement.

1. (1) This Act may be called the Govern-
ment Management of Private Estates Act, 1892.

(2) It extends to the whole of British India, inclusive of
* * * * * British Baluchistan; and

(3) It shall come into force at once.

(Note).

Legislative Changes.

The words "Upper Burma," in sub-section (2) were repealed by the Burma
Laws Act, 1898 (XIII of 1898). E

Definitions.

2. In this Act, unless there is something
repugnant in the subject or context,—

(1) "immoveable property" ¹ includes land, buildings, here-
ditary allowances,² rights to ways,³ lights, ferries,⁴ fisheries,⁵
or any other benefit to arise out of land,⁶ and things attached
to the earth, or permanently fastened to anything which is attached
to the earth, but not standing timber,⁷ growing crops,⁸ or
grass; ⁹

(2) "gross income" includes all receipts of every kind in
produce or cash, except money borrowed, recoveries of principal,
and the proceeds of sale of immoveable property or of moveable
property properly classed as capital; and

(3) "private estates under Government management" include—

- (a) estates under the Court of Wards;
- (b) encumbered estates under Government management;
- (c) estates attached for default of payment of Government
revenue;
- (d) minors' estates placed under the guardianship of a
revenue-officer of the Government by a Civil Court;
- (e) estates managed by a Collector in pursuance of any order
made under the Code of Civil Procedure; and
- (f) all other estates made over to, or taken under the manage-
ment of, a revenue-officer of the Government as such
under any law for the time being in force, or in virtue
of any agreement.

(Notes).

1.—"Immoveable property."

(1) Immoveable property—Scope of the term.

- (i) The term "immoveable property" comprehends all that would be real
property according to English law. 18 B.L.R. 264; *overruling* 4 B.
H.C.R. 189. F

1.—“Immoveable property”—(Continued).

- (ii) The expression “immoveable property,” under the law of British India is given a wide significance, and, as held in 11 I.A. p. 52, it comprehends certainly all that would be real property, according to English Law and possibly more. (*Ibid.*) **G**

(2) Different enactments have modified the literal sense of the term “immoveable property” to suit their respective purpose.

- (a) Immoveable property shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. S. 3 (25), General Clauses Act (X of 1897).

N.B.—“This definition, it may be observed, applies to all those Acts which deal with immoveable property, but which do not contain any definition of it,” 3 A.L.J. 148. **H**

- (b) “Immoveable property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber growing crops, or grass. (S. 3, Registration Act, XVI of 1908). **I**

- (c) Immoveable property includes land, incorporeal tenements and things, attached to the earth, or permanently fastened to anything which is attached to the earth. (S. 3, Indian Succession Act). **J**

- (d) “Immoveable property” shall extend to and include messuages, tenements and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein. (S. 2, Indian Trustee Act, XXVII of 1866). **K**

- (e) “Immoveable property” does not include standing timber, growing crops or grass. (S. 3, Transfer of Property Act, 1882). **L**

- (f) In the Indian Penal Code, “Immoveable property” is not defined but there is a definition of the term moveable property which runs as follows:—The words “moveable property” are intended to include corporeal property of every description, except lands and things attached to the earth or permanently fastened to anything which is attached to the earth. (See S. 22, I.P.C.). **M**

(3) Definition of the term wider in this Act.

The definition given here should be read as supplemental to the definition of the term in S. 2, General Clauses Act, I of 1868, as the definition in this Act is wider in scope. See 13 M. 54. See also, 9 B. 97; 9 B. 558; 10 B. 73. **N**

(4) The following are immoveable property.

- (a) The Interest of a tenant in his holding. 3 A. 422 (This decision was with reference to the definition of immoveable property in the General Clauses Act, I of 1868). **O**

- (b) A corody (or nibandha) involves generally the idea of a connection with immoveable property. 9 B.H.C.R. 222 (226) 14 M.I.A. 551. **P**

- (c) The plaintiff had, under a grant from the Peishwas, acquired a right known as *tipnis pansare* right, to levy, in the territory now owned by *Punt Suchi*, a certain rate or cess on all imports into, and exports from it. Held, that what the plaintiff claimed was an allowance granted by the Peishwa in permanence, and such an allowance, whether secured on land, or not, being according to Hindu law *nibandha*, was immoveable property. 33 B. 373=11 Bom. L.R. 352=2 Ind. Cas. 499, (6 B 546, F.; 27 B. 22, Appl.) **Q**

1.—“Immoveable property.”—(Concluded).

- (d) A *Toda giras hak*, being a right to receive an annual payment, the liability for which is not a mere personal liability but one which attaches to the inamdar into whose hands the village may pass is “an interest in immoveable property.” 13 B.L.R. 254 (overruling 4 B.H.C.R. 189); 8 M.I.A. 1; 23 A. 209; N.W.P.H.C.R. (1867) 63 (F.B.). R
- (e) In the case of a customary right to receive *haq-i-chahram* where it does not appear that the Zemindar’s right to a share of the purchase money is limited to a right to claim it from the vendor, the right can be enforced against the vendee also. 23 A. 209 (210); (N.W.P.H.C.R. (1867), 63 (F.B.). F, 13 B.L.R. 254 (P.C.). S
- (f) The *Vafshasan* allowances are immoveable property. 23 B. 22 (26). T
- (g) Hereditary offices are regarded as immoveable property by the Hindu law. 9 B.H.C.R. 99. (Approved in 13 B.L.R. 254, 263, 264 (P.C.); 2 M. I.A. 23; 4 B.H.C.R. 51; 7 B.H.C.R.A.C. 1.) U
- (h) Also a grant by the Peishwa, by a *sunnad*, dated 1790, of annual allowance and three *khandis* of rice to be levied from certain *mahala* and *fokts* mentioned in the *sunnad*. 6 B. 546 (F.B.). Y
- N.B.—In 5 B. 322, an “annuity” was not regarded as immoveable, because it was not made a charge upon land. (Overruled by 6 B. 546). W
- (i) A right of pre-emption. 37 P.R. 1888. X
- (j) A decree for the sale of immoveable property passed on a hypothecation bond has been held to be immoveable property. 1 B. 267; 9 C. 839; 9 C. 520; 4 M.H.C. 378; 18 B. 332; Cf. 11 B. 506. Y
- (k) *Tari* palms and cocoanut trees. U.B.R. 1902, 3rd Qr. Registration, p. 1. Z

2.—“Hereditary allowances.”**(1) Agreement securing payment of money annually for temple expense.**

An agreement securing payment of a certain sum of money annually for the expense of a temple is not one relating to hereditary allowance. 21 B. 387. A

(2) Malikana.

A right for *malikana*, which is an annual recurring charge on immoveable property is immoveable property. 9 A. 591; 5 C. 921. B

3.—“Rights to ways.”**Right of way—Easement.**

- (a) A right of way is immoveable property and there is nothing in S. 44, Civ. Pro. Code, 1882, repugnant to the interpretation of the term “immoveable property” as including a right of way. 13 C.W.N. 451 = 9 C.L.J. 336; 19 C. 544; 23 B. 673; 21 W.R. 178; 35 C. 889, (R.). C
- (b) So also a claim to an easement. 24 W.R. 300. D

4.—“Ferries.”**Right of ferry.**

A—has been held to be included in the conception of immoveable property. 13 M. 54. E

5.—“Fisheries.”**Fishery.**

The following have been held to be included in the conception of immoveable property:—

- (i) Right of fishery. 3 C. 276, 20 C. 446; 24 C. 449 = 2 C.W.N. 109. F

5.—“Fisheries” —(Concluded).

- (ii) The right to fish in a tank being immoveable property, a suit to recover possession of such right falls under S. 9, Specific Relief Act. 19 B. 221, cf. 19 C. 544 (F.B.) and 18 C. 80. **G**
- (iii) According to S. 16-A, Civ. Pro. Code, 1882, a suit for rent of a fishery is a suit for immoveable property. 24 C. 449 (454) = 2 C.W.N. 169. [19 C. 544 (F.B.), F.]. **H**

6.—“Benefit to arise out of land.”

(1) Hat, a benefit arising out of land.

A hat is a benefit arising out of land and it is therefore within the term ‘immoveable property.’ 22 C. 752. But see 29 C. 614 (619). **I**

(2) Future crops—Fruits.

(a) As, according to this Act, immoveable property includes any benefit to arise out of land, future crops must be classed as immoveable and not as moveable property. See 5 C.P.L.R. 6. **J**

(b) So also the right to future fruits on trees under S. 3 (25), General Clauses Act, 1897. 66 P.R. 1900. **K**

(3) Right to collect dues.

The — from a fair on a piece of land was held to be “immoveable property” such a right constituting a benefit arising out of such land. 27 A. 462 = 2 A.L.J. 208 = A.W.N. (1905), 48. **L**

(4) Maintenance.

A suit for—seeking to be charged on immoveable property is not one for “benefit to arise out of land.” 9 C. 535; but see 21 B. 387. **M**

(5) Fruits on trees to be produced in future.

Fruits on trees to be produced in future do not come within the definition of immoveable property, not being benefits to arise out of land. 72 P. R. 1884. See, also, 28 M. 182 (F.B.) = 14 M.L.J. 415 (F.B.). **N**

7.—“Standing timber.”

(1) “Standing.”—Significance of the word.

(a) The word “standing” used before timber has been used purposely inas-much as ‘trees before severance from the ground are reckoned as forming part of it and are therefore immoveable property, but on severance of course, they become moveable.’ See 22 C. 877; 25 C. 692. **O**

(b) “It is thus manifest that, in order that a certain tree should be put in the category of “standing timber” it must be a tree which is fit to be used in building and repairing houses, and that it must not have been severed from the ground.” 3 A.L.J. 213. **P**

(c) Further, if an ordinary fruit-bearing tree is used in a certain locality for building and other purposes of like nature it is to be treated as stand-ing timber. 3 A.L.J. 213. **Q**

(2) Timber.

(a) By the term—is meant properly such trees only as are fit to be used in building and repairing houses. 24 B. 31 (33). **R**

(b) “In Dart, it is laid down that timber includes, by local custom, beech and various other trees, even trees which are primarily fruit trees, as cherry, chestnut and walnut. *Chandos v. Talbot*, 2 P. Wms. 606 cited in 24 B. 31 (33). **S**

7.—“*Standing timber*”—(Concluded).

(3) **Mango tree—Timber.**

Though, primarily, a mango tree is a fruit-bearing tree and not a timber tree, still, if, according to the custom of a particular locality, such tree is used in building or repairing houses, it can be taken to be a timber tree. See 24 B. 31 (33).

7.—“*Growing crops*.”

(1) **Growing crops.**

—are not included in the definition of immoveable property. 11 C.P.L.R. 87 (98). U

(2) “**Crop**” defined.

(a) A crop is defined in Wharton's Law Lexicon as the seeds or products of the harvest in corn. 11 C.P.L.R. 87. Y

(b) But the term, as used in this Act, must be held to include all vegetable growths whether in the form of fruit, bark or roots. (*Ibid.*) W

8.—“*Grass*.”

Grass, meaning of the term.

(a) Grass means also growing grass or herbage.

(b) “And a right to depasture or to cut grass for an indefinite time would be regarded as a right in immoveable property.” See Shephard and Brown's Transfer of Property Act, p. 12. X

3. It shall be lawful for the Local Government¹—
Power to levy rate.

(1) to levy on all private estates under Government management a rate, not exceeding five per cent. on the gross income, calculated, as nearly as may be possible, to cover—

(a) the costs of all Government establishments in so far as they may be employed in the supervision or management of such estates other than establishments, specially entertained, for the supervision or management of any particular estate or group of estates, and

(b) all contingent expenditure incurred in consequence of such supervision or management;

(2) from time to time to vary such rate; and

(3) to reduce or remit such rate in any special case or cases as may be equitable:

Provided that, in deciding the amount of the rate to be levied under this Act on any particular estate or group of estates, the Local Government shall consider the expenditure incurred on special establishments for such estate or estates.

(Note).

1.—“Local Government.”

• Central Provinces.

- For instance of notification issued under the powers conferred by this section fixing a rate to be levied on private estates under Government management, see Central Provinces List of Local Rules and Orders.

4. In cases where an officer of the Government is employed to give legal advice, or to audit accounts on behalf of any estate, the Local Government, if it considers the services rendered to be of a special nature, may, in its discretion, direct a special charge to be made against that estate on account of such services, irrespective of the rate leviable under the last foregoing section.

Power to levy special charges.

5. Nothing in this Act shall apply to the cost of establishments specially entertained or to expenditure of any description specially incurred in respect of any particular estate or estates.

Saving as to special expenditure.

6. All rates for general supervision or management levied by any Local Government before the commencement of this Act shall be deemed to have been levied under this Act.

Validation of levy of past rates.

7. The Local Government may make any rules, ¹ and issue any orders, which may be necessary for carrying this Act into effect, and which are consistent therewith.

Power to make rules.

(Notes).

1.—“Rules.”

(1) Punjab.

For instances of rules made under the powers conferred by this section, see Punjab List of Local Rules and Orders. **V**

(2) United Provinces of Agra and Oudh.

For instances of rules made under the powers conferred by this section, see North-Western Provinces and Oudh Gazette, 1893. **Z**

8. Where any Government establishment is employed in such supervision as aforesaid, the Local Government shall be the sole judge of the cost attributable to such employment, and its decision thereon shall not be questioned in any Court of Law or otherwise.

Exemption from jurisdiction of Court.

9. Section 17 of the Court of Wards Act, 1879 (passed by the Lieutenant-Governor of Bengal in Council), and so much of Act III of 1881 (also passed by the Lieutenant-Governor of Bengal in Council) as relates to section 17 of the said Court of Wards Act, 1879, are hereby repealed.

Repeal.

THE GOVERNMENT MANAGEMENT OF PRIVATE ESTATES ACT, 1892.

TABLE OF CASES NOTED IN THIS ACT.

I.L.R. Allahabad Series.			PAGE
3 A 422	... Nabira Rai v. Achampat Rai	...	3
9 A 591	... Churaman v. Balli	...	4
23 A 209 (210)	... Dhandai Bibi v. Abdhur Rahman	...	4
27 A 462	... Sikandar v. Bahadur	...	5
I.L.R. Bombay Series.			
1 B 267	... Gopal Narayan v. Trimbak Sadashiv	...	1
5 B 322	... The Collector of Thana v. Krishna Nath	...	4
6 B 546 (F B)	... The Collector of Thana v. Hari Sita Ram	...	3, 4
9 B 97	... Nana Bayaji v. Pandurang Vasudev	...	3
9 B 559	... <i>In re the petition of Rakhmaji</i>	...	3
10 B 78*	... Govinda Babaji v. Naiku Joti	...	3
11 B 506	... Purmanddas Jiwardas v. Vallabdas Wallji	...	4
12 B 221	... Bhundal Pande v. Pandolpos Patil	...	5
18 B 332	... Trikam Mahdhav Shet v. Hirji Harjivan Shet	...	4
21 B 387	... Vishnu Ganesh Joshi v. Yeshavantrao	...	4, 5
23 B 22 (26)	... Keshav v. Vinayak	...	3, 4
23 B 673	... Mangaldas v. Jewanram	...	4
24 B 31 (33)	... Krishna Row v. Babaji	...	5, 6
33 B 373	... Krishnaji Pandurang v. Gajanan Balvant Kulkarni	...	3
I. L. R. Calcutta Series.			
3 C 276	... Parbutty Nath Roy Chowdhry v. Mudho Paroo	...	4
5 C 921	... Hurinuzi Begum v. Hirdaypatrain	...	4
9 C 520	... Ulfatunnissa v. Hosain Khan	...	4
9 C 535	... Beer Chunder Manikkya v. Raj Commar, Nabadeep	...	
	Chunder Deb Burnomo	...	5
9 C 839	... Koob Lall Chowdhry v. Nittyanand Singh	...	4
18 C 80	... Jogi Ahir v. Bishen Dayal Singh	...	5
19 C 544 (F B)	... Fadu Jhala v. Gour Mohun Jhala	...	4, 5
20 C 446	... Ram Gopal Bysack v. Nurumuddin <i>alias</i> Noor	...	
	Mahamed Mundul	...	4
22 C 752	... Surendra Narain Singh v. Bhailal Thakur	...	5
22 C 877	... Surat Lall Mondal v. Umar Haji	...	5
24 C 449 (454)	... Shibu Halder v. Gupi Sundari Dasya	...	4, 5
25 C 692	... Mangun Jha v. Dolhin Golab Koer	...	5
29 C 614 (619)	... Fuzlur Rahman v. Krishna Prasad	...	5
35 C 889	... Kristodhone Mitter v. Nandarani Dassee	...	4
I. L. R. Madras Series.			
13 M 54	... Krishna v. Akilanda	...	3, 4
28 M 182 (F B)	... Kenath Puthon Vittil Tavazhi v. Narayanan	...	5

*It is wrongly printed as 10 B. 73 at p. 3.

†It is wrongly printed as 27 B. 22 at p. 3.

TABLE OF CASES.

Punjab Records.			PAGE
72 P R 1884	... Bagu Mal v. Bahawal Bakhsh	...	5
37 P R 1828	... Mahummad Bakhsh v. Hayat Khan	...	4
66 P R 1900	... Asa Ram v. Nur Din	...	5
Central Provinces Law Reports.			
5 C P L R 6	... Raja Bijc Bahadur v. Ganoolal and Balchand	...	5
11 C P L R 87 (88)	Atmaram Bapujee Taltule v. Doma Bari Mukunda Bari and Ohintoo	...	6
Allahabad Law Journal.			
2 A L J 208	... Sikandar v. Bahadur	...	5
Allahabad Weekly Notes.			
A W N 1905 48	... Sikandar v. Bahadur	...	5
Bombay High Court Reports.			
4 B H C A C 51	... M. S. Sinde v. C. P. Sinde	...	4
4 B H C R 189	... Maharana Fate Sangji v. Desai, Kalyanraya	...	2, 4
7 B H C A C 1	... Sangappa bin Ningappa v. Basappa bin Parappa	...	5
9 B H C 99	... Balavantra alias Tatiaji Bapaji v. Purshotam Sid- heshvar	...	4
9 B H C R 222 (226).	The Government of Bombay v. Goswami Shri Gir- dharlalji	...	3
Bombay Law Reporter.			
11 Bom L R 352	... Krishnaji Pandurang v. Gajanan Balvant Kulkarni	...	3
Calcutta Law Journal.			
9 C L J 336	... Bejoy Chandra Nag v. Banku Behari Majumdar	...	4
Calcutta Weekly Notes.			
2 C W N 169*	... Shibu Halder v. Gupi Sundari Dasya	...	4, 5
13 C W N 451	... Bejoy Chandra Nag v. Bunku Behari Mazumdar	...	4
Bengal Law Reports.			
13 B L R 354, 263, 264 (P C)	... Maharana Futtehsangi Jaswantsangji v. Desai Kul- lianraiji Hakoomutraizi	...	2, 4
Weekly Reports.			
21 W R 178	... Maharana Futtehsangji Jaswantsangji v. Doss Kul lianraiji Hekoomutraiji	...	4
24 W R 300	... Mohunt Deo Surun Poory v. Moonshet Mahomed Ismail	...	4
Madras High Court Reports.			
4 M H C 378	... Achool Bayamah v. Dhany Ram	...	4
Madras Law Journal.			
14 M L J 415 (F B)	Kenath Puthen Vittil Tavahli v. Narayanan	...	5
North-West Provinces High Court Reports.			
N W P H C R (1867) 63 (F B)	... Heera Ram v. The Hon'ble Sir Raja Deo Narain Singh	...	4

* It is wrongly printed as 2 C.W.N. 109 at p. 4.

TABLE OF CASES.

3

Moore's Indian Appeals.		PAGE
2 M I A 23	... Beema Shunker Balkrishna and Venaik v. Jamas-Jee Shapoorjee and others	4
8 M PA 1	... Sumbhoo Lall Girdhur Lall v. The Collector of Surat	4
44 M I A 551	... Government of Bombay v. Desai Kulli anrai Hakoonudrai	3
Law Reports, Indian Appeals.		
11 I A 52.	... Achal Ram v. Udai Partab Addiya a Dat Singh	3
Indian Cases.		
2 Ind Cas 489	† ... Krishnaji Pandurang v. Gajanan Balvant Kulkarni	3
English Cases.		
Chandos v. Talbot	2 I' Wms 606	5

THE GOVERNMENT MANAGEMENT OF PRIVATE ESTATES ACT, 1892.

INDEX.

Note: 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2—S in Brevier Roman denotes the section.

A

Act X of 1892, Statement of objects and reasons, A, 1.
Report of the Select Committee, B, 1.
Proceedings in Council, C, 1.
Places where has been declared to be in force, D, 1.
Title, extent, and commencement, S. 1, 2.

B

Benefit arising out of land, Hat, a, I, 5.

C

Charges, Power to levy special, S. 4, 7.
Court, Exemption from jurisdiction of, S. 8, 7.
Crop, defined, V, W, 6.

D

Definitions, Immoveable property, S. 2, 2—6.
Gross income, S. 2, 2—6.
Private estate, S. 2, 2—6.

E

Easement, Right of way, C, D, 4.
Exemption, from jurisdiction of Court, S. 8, 7.
Expenditure, Saving as to special, S. 5, 7.

F

Fruit, on trees to be produced in future, N, 5.
Future crops, Fruits, J, K, 5.

G

Grass, Meaning of the term, X, 6.
Growing crops, Immoveable property, U, 6.

H

Hat, a benefit arising out of land, I, 5.
Hereditary allowance, Agreement securing payment money annually for temple expense, A, 4.

I

Immoveable property, Different enactments have modified the literal sense of the term, to suit their respective purpose, H—Z, 3, 4.
Right of fishery whethor, F—H, 4, 5.
Right to collect dues, L, 5.

J

Jurisdiction, Exemption from, of Court, S. 8, 7.

L

Local Government, Power to levy rate, S. 3, 6, 7.

Power to levy special charges, S. 4, 7.

Powers to make rules, S. 7, 7.

M

Maintenance, Immoveable property, M. 5.

Malikana, right of, B, 4.

Mango tree, Timber, T, 6.

R

Rate, Power to levy, S. 3, 6, 7.

Validation of levy of past, S. 6, 7.

Repeal, of enactments, S. 9, 7.

Right of ferry, Immoveable property, E, 4.

Right of Fishery, whether immoveable property, F—H, 3, 4.

Right of way, Easement, C, D, 4.

Rules, Powers to make, S. 7, 7.

Punjab, Y, 7.

United Provinces of Agra and Oudh, Z, 7.

S

Saving, as to special expenditure, S. 5, 7.

Standing, Significance of the word, O—Q, 5.

Timber, Meaning, R, S, 5.

Mango tree, T, 6.

W

Words and phrases, Immoveable property—Meaning, S. 2, 2—6

Gross income—Meaning, S. 2, 2—6.

Private estate—Meaning, S. 2, 2—6.

